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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1929.

No. [redacted] 90

FRANK L. SMITH, CICERO J. LINDLY, HAL W. TROVILLION, P. H. MOYNIHAN, WILLIAM BURKHARDT, EDWARD H. WRIGHT and WILLIAM J. SMITH, the persons constituting the Illinois Commerce Commission of the State of Illinois, and OSCAR E. CARLSTROM, Attorney General of the State of Illinois,

AND

Appellants,

CITY OF CHICAGO, a Municipal Corporation,

Appellant,

vs.

ILLINOIS BELL TELEPHONE COMPANY,

Appellee.

APPEAL FROM DISTRICT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION (3746).

APPENDIX TO APPELLANTS' BRIEF AND ARGUMENT.

OSCAR E. CARLSTROM,
Attorney General, State of Illinois.
SAMUEL A. ETTELSON,
Corporation Counsel, City of Chicago.
GEORGE I. HAIGHT,
EDMUND D. ADCOCK,
BENJAMIN F. GOLDSTEIN,
Special Counsel for City of Chicago,
Intervenor.

BARNARD & MILLER PRINT, CHICAGO

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1929.

No. 845

FRANK L. SMITH, CICERO J. LINDLY, HAL W. TROVILLION, P. H. MOYNIHAN, WILLIAM BURKHARDT, EDWARD H. WRIGHT and WILLIAM J. SMITH, the persons constituting the Illinois Commerce Commission of the State of Illinois, and OSCAR E. CARLSTROM, Attorney General of the State of Illinois,

AND

Appellants,

CITY OF CHICAGO, a Municipal Corporation,

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vs.

ILLINOIS BELL TELEPHONE COMPANY,

Appellee.

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APPENDIX TO APPELLANTS' BRIEF AND ARGUMENT.

ABSTRACT OF RECORD

In City of Houston v. Southwestern Bell Telephone Co. (259 U. S. 318).

The Southwestern Telegraph and Telephone Company Statement of Dividends Paid, Years 1883 to 1919, Inclusive.

Plaintiff's Exhibit 9 (Rec., Vol. II, 798-9).

Year	Annual Rate (Percent)
1883 to 1889	None
1890	4.50
1891	3.66
1892 to 1896	4.00
1897	4.75
1898	5.00
1899	3.50
1900	4.00
1901	8.00
1902	2.20
1903	6.30
1904	5.50
1905	5.60
1906	6.90
1907	6.25
1908	10.50
1909	7.50
1910	6.50
1911	6.00
1912	7.00
1913	6.00
1914 to 1919	5.00
Average	5.36

Dividend Rate	Amount	Percent of total dividends paid
Less than 4%	$ 224,080	.98
4% and less than 5%	679,063	2.98
5% and less than 6%	11,581,860	50.85
6% and less than 7%	5,779,658	25.38
7% and less than 8%	2,455,500	10.78
8%	585,280	2.57
10½%	1,470,000	6.46
Total dividends paid	$22,775,441	100.00

Preliminary Contract between American Bell Telephone Co. and Southwestern Telegraph & Telephone Co., dated July 27, 1889 (Rec., Vol. II, 878).

The following is an exact copy of this exhibit:

1690 This agreement made this twenty-seventh day of July 1889 by and between the American Bell Telephone Company, a corporation created under the laws of the Commonwealth of Massachusetts of the first part, and The Southwestern Telegraph and Telephone Company, a corporation created under the laws of the State of New York, of the second part. Witnesseth:

Whereas the second party has certain license contracts issued by said The American Bell Telephone Company (a schedule of which contracts is hereto annexed marked "A") and

Whereas said second party desires to surrender said several license contracts and to have certain other license contracts as hereinafter set forth, and the first party has agreed to accept such surrender and to enter into such other license contracts as hereinafter set forth.

Now, therefore, it is agreed as follows, that is to say:

1. Conditional upon said second party owning and controlling all and singular any plants, properties, franchises and rights of every name and nature built, acquired or used, under or by virtue of or for any use in conducting any business done or to be done under said license contracts so to be surrendered, or any of them, and standing in the name of said second party or any other name, or operated by said second party or by other parties, and all income and revenues therefrom and thereunder, and

Conditional upon said second party forthwith surrendering and giving up to said first party said several license contracts named in schedule A, and all and singular the

rights of it, said second party, or of other parties in, to and under the same.

1691 2. Said first party agrees that it will accept such surrender and that it will thereupon enter into the following described agreements with said second party, that is to say:

(*a*) license contract for exchange purposes—Form 109-D, hereto annexed marked "B,"

(*b*) license contract for extra-territorial connecting lines, Form 113-D, hereto annexed marked "C."

(*c*) license contract for the supply of telephones for private lines and other purposes, Form 116-C, hereto annexed marked "D."

But said second party shall assume and perform any and all contracts with subscribers made under said license contracts or any or either of them so to be surrendered and existing at the time of such surrender and shall hold all telephones furnished thereunder by said The American Bell Telephone Company (schedules of which said telephones are hereto annexed marked "E"), as the property of said The American Bell Telephone Company and each under the license contract for like purposes as that under which it was originally furnished, so to be made with it said second party and with like effect as if actually furnished thereunder, except that rental and royalty thereon shall begin at the date of such new license contracts.

3. Whereas it has been and is agreed that said first party in consideration of the premises shall be entitled to and have thirty hundredths (30-100) interest in all and singular the property, rights, business and property of said second party, as the same stood on July 1, 1889, to be paid as hereinafter specified, and that such interest shall not be required to contribute to the expense of developing the territory of said second party nor to the payment of liabilities incurred on account thereof before the first day of June 1891.

Now, therefore, for the accomplishment of said purpose and in consideration of the premises, the second party shall forthwith upon the execution of said license con-
1692 tracts furnish and pay to said The American Bell Telephone Company thirty hundredths (30-100) of its capital stock as the same shall stand fixed at the date of such payment, all such stock to be lawfully issued, full paid and not subject to any assessment or contribution.

4. Said The American Bell Telephone Company agrees that it will release to said second party from time to time its claim as holder of such stock to dividends which may be declared thereon before the first day of June 1891 of net earnings actually received before that date.

In computing net earnings out of which dividends may be declared before said first day of June 1891 there shall be deducted besides all sums necessary for the current expenses of the business, all sums necessary for the maintenance and extension of said second party's lines, instruments, plant and business in the best condition, which sums shall not at any time become the subject of dividends, but this stipulation and such release shall not impair or affect in any manner any other of the rights of said The American Bell Telephone Company as a stockholder, and on said fist day of June 1891, the second party shall be free from debt or liability without said The American Bell Telephone Company contributing in any manner to the payment thereof.

5. From time to time, if and whenever a further issue shall be made, whether or—the present authorized capital of it, said second party, or of any increase thereof, except as provided in Article 11, the first party shall have the right and option to call for and take an amount of such stock proportionate to that which may have been subscribed for, taken by or issued to other stockholders or others, in the ratio of its then holdings to the holdings of other stock-

holders before such increase or issue and upon the same terms and at the same prices.

6. Said second party shall not borrow money for extension of its business nor for any other purpose without the consent of said The American Bell Telephone Company.

7. Said second party shall assume and pay any and all taxes, whether municipal, county, state or other, on, or
1693 on account of or by reason of the instrument leased or business done under said license contracts to whomsoever assessed, but this stipulation shall not be held to include the tax assessed by the State of Massachusetts on the corporate franchise of said The American Bell Telephone Company.

8. Said second party shall keep books and accounts of its business according to forms furnished by said The American Bell Telephone Company, which books and accounts shall be open to inspection at all reasonable times by any authorized agent of said company, and shall make reports to it embodying such information as and in such form as it may from time to time desire.

9. Said The American Bell Telephone Company shall have two representatives on the Board of Directors and one representative on the Executive Committee of said second party.

10. Touching certain telephones on which the second party during a certain period paid the first party royalty, but during such period received no compensation for their use by certain subscribers at certain exchanges, respecting which the second party has, from time to time, presented to the first party certain claims, the first party will, if this agreement be ratified as herein provided, allow the second party a rebate on such royalty to an amount not exceeding fifteen thousand dollars, which amount shall be a full and final settlement of all such claims.

11. The first party consents that the exchange sub-licenses made by the second party (a schedule of which is hereto annexed marked "F") may continue in force until their expiration or earlier termination, on condition that each of such sub-licenses shall, before December 31, 1889, be in such form and so executed as the first party shall approve, and that a certified copy of each shall be furnished to the first party before said date; but the second party agrees to acquire and own at or before the expiration of each of such sub-licenses, all and singular the property, plant, rights and business owned or operated thereunder, without the first party contributing in any manner
1694 to the payment thereof, but if they or either of them shall be acquired by increase or issue of capital stock above two million ($2,000,000) dollars, the second party shall furnish and pay to the first party an amount of such stock equal to thirty-seventieths (30-70) of such increase or issue, lawfully issued, full paid and not subject to any assessment or contribution.

12. The second party shall submit this agreement to its stockholders for ratification at a meeting to be duly called and held on or before September 7, 1889, and if such ratification shall not be procured at such meeting and a properly certified transcript of the records of such meeting delivered to the first party within five days following the date of such meeting and all acts and things necessary to qualify the second party to claim in full the benefits of this agreement done on or before September 30, 1889, in a manner satisfactory to the first party, then at the election of the first party, made at any time after said date, this agreement shall be void.

In witness whereof the parties hereto have caused their respective corporate seals to be hereto affixed and these presents to be signed in duplicate in their names and behalf by their respective officers thereto duly authorized.

THE AMERICAN BELL TELEPHONE COMPANY,
(Sd.) C. J. F.
(Sd.) By W. H. FORBES,
[SEAL] *Member of the Executive Committee.*
THE SOUTHWESTERN TELEGRAPH AND TELEPHONE CO.,
(Sd.) By LEVI SPRAGUE,
President.
(Sd.) CHAS. J. GLIDDEN,
Secy.
[SEAL]

1695 Form 109-D.

Contract for Exchanges between American Bell Telephone Co. and Southwestern Telegraph & Telephone Co., dated July 27, 1889 (Rec., Vol. II, 881).

Contract for Exchanges.

This agreement, made this Twenty-seventh day of July A. D. 1889, by and between the American Bell Telephone Company, a corporation created under the laws of the State of Massachusetts, Lessor and Licensor, party of the first part, and The Southwestern Telegraph and Telephone Company, a corporation created under the laws of the State of New York, Lessee and Licensee, party of the second part, Witnesseth:

(1) Whereas, the Lessor owns the Letters Patent of the United States granted to Alexander Graham Bell, March 7, 1876, and January 30, 1877, numbered 174,465, 186,787 respectively, and owns or has the right to use, and may hereafter own or have the right to use, sundry other inventions, which are or may be embodied in electric speaking telephones, and desires to extend the use of telephones licensed by it in every manner in which the public may wish to use the same, and for that purpose to provide for the construction and use of the apparatus and lines necessary to be used in connection therewith; and whereas the Lessee desires to obtain the use of telephones under lease and

license from the party of the first part to be used with the lines of telephonic district or exchanges systems established and owned by it in the territory hereinafter described under the provisions hereinafter set forth; now it is agreed as follows:

(2) The rights hereby granted shall be perpetual unless determined as hereinafter provided, and shall extend to all Exchanges established and owned by the Licensee, and wholly within the following described territory, namely: The States of Arkansas and Texas.

(3) For the purpose of this contract on "Exchange," or "a district or exchange system" means a system in which different stations on the same or different circuits, and either within any city or town, or within a radius of fifteen miles of a central office, are connected with
1696 such central office or branch offices, for the purpose of placing subscribers or other parties by such circuits in communication with such central or branch offices, or with each other, either directly or through the agents of the system. No office or line of an Exchange can be connected with any point outside of its territory, nor with any telegraph company's office or line, except by lines of the Licensor or parties specially designated by it for this purpose, nor, except in connection with such lines, can the lines of an Exchange be used for performing any part of the work of transmitting messages by telephone to points outside its territory, and no telegraph company, unless specially permitted by the Licensor, can be a subscriber or use the system to collect and deliver messages from and to its customers, nor shall any person use the same telephone in connection with different exchange systems.

(4) The Licensor, at its general office or factory, will deliver to the second party, as needed, electric speaking telephones, made and to be used under its patents, during the existence of the rights hereby granted and as herein set forth and permitted, and all telephones delivered to the

second party during the continuance hereof shall be deemed to be furnished hereunder, unless otherwise specially designated by the Licensor. They will be of such character and pattern and bear such marks as the Lessor shall from time to time determine, but the second party may choose from among such standard patterns. Each of said telephones shall remain the property of the Licensor, and is hereby leased, and the use of it licensed under said patents and all others under which the Lessor has or may have a right to license, so far as applicable thereto, for the purposes herein declared for the term of one year from the day when rent and royalty begin to accrue on it as provided in Article 8, but the due payment thereof to the Licensor, and the due performance of the stipulations hereof during said year, by the second party and those using the telephone under it, shall ipso facto operate to renew the lease and license for another year, and so on until the expiration or
1697 other determination hereof; the second party is hereby licensed to use said telephones for any purpose, upon circuits exclusively composed of the lines of any such exchange system, and to use them in connection with the trunk lines reserved to the Licensor by Article 9, for the purposes and to the extent therein limited, during the term hereby created, upon condition and so long as the rental therefor shall be duly paid to the Licensor and as the provisions hereof are not violated, but not longer or otherwise; and it may grant said right to its customers by contracts as provided in Article 7.

The Lessor will not license any telephones to be used by others upon an exchange system within said territory while the rights of the second party hereunder exist, except telephone to be used on the lines of Exchanges having their central offices outside said territory by persons within said territory who are or may be subscribers to or customers of such Exchanges; but the second party shall, by general or special exchanges, supply (so far as it is authorized

so to do by this contract) all reasonable demands of the public, and shall be diligent to increase the number of telephones used on its exchanges. All rights not hereby specifically granted remain to the Licensor.

(5) The Lessor will license to be used with such telephones, the inventions in call-bells, switches, switch-boards, and other apparatus needed for such telephone lines, which it can so license, upon such royalties as it may from time to time establish, not greater than those fixed for others under similar circumstances; but such call-bells, switches, switch-boards and other apparatus shall be used only with telephones licensed by the Lessor, and the second party agrees not to use them otherwise nor to dispose of them to any one except those so licensed, or to the licensed manufacturers of the Lessor. The second party may enjoy any rights of way and similar franchises to maintain said lines which the Lessor can permit it to use, when and so
1698 long as, in the judgment of the Lessor, it shall not interfere with the Lessor's enjoyment thereof, and shall pay whatever may be due to third persons, if anything, growing out of or in connection with such use by it.

For trunk lines from the several exchange offices to points outside of the respective exchange District and to telegraph offices, the Lessor may, without further compensation, enjoy all rights of the Licensee to erect and maintain lines, and may use its poles and fixtures, but shall pay a pro rata share of the cost of erecting and maintaining them.

(6) The Lessee admits the validity of all patents relating to telephony and telephonic appliances now or hereafter held by the Licensor or under which it may hold licenses exclusive in their character, and the validity of its title thereto, and will not dispute the same, nor make, use, or be interested in any telephones or telephonic lines or business not licensed by the Licensor or its assigns.

(7) The contract between the second party and these who are to use telephones under it, as herein provided, shall express in such form as the Lessor shall from time to time approve, that the telephone is the property of the Licensor; that it is leased and licensed by it only as herein expressed; that all use of it otherwise is an injury to and invasion of the rights of the Licensor as owner thereof and of the patent rights used therein and thereby, entitling it to all the remedies herein provided and to an injunction, and other legal redress, in a suit by it in its name and behalf. The second party shall require every person using said telephones for communications or messages sent or to be sent over other telephone or telegraph lines, to provide for payment of tolls thereon, and to make every such message subject to such stipulations, regulations, and conditions respecting the liability of such lines for errors and mistakes as the Licensor may from time to time require,

and for that purpose will incorporate into its sub-
1699 scription contracts and message blanks such provisions and contracts, to be agreed to by the subscriber and customer, as the Licensor may from time to time approve, and will hold the Lessor harmless from all loss and expense consequent upon its failure so to do.

(8) The second party shall charge subscribers to its Exchanges such rental and royalty for the telephones as the Licensor may fix from time to time, for these and other like exchanges, and also in addition a sum not exorbitant nor unusual for the use of call-bells, batteries, wires, and other appliances, and for services furnished or performed, and may collect both of said sums for a period not exceeding one year in advance. It will make such reports, giving such information regarding the operations of its Exchanges and the prices charged as the Licensor may from time to time request. It shall pay to the Licensor a rental and royalty at the rate per instrument of Seventy (70) per cent, of the telephone rental and royalty fixed as above

(being a discount of Thirty (30) per cent) to commence on each telephone on the first day of the second calendar month after its shipment by the Licensor, to continue until the instrument shall be put into the possession of the Licensor, or proved to be destroyed, and to be paid in equal monthly payments in advance, at the Licensor's office, on the tenth day of each month up to the last day of the same month. Until otherwise fixed, the rates shall be as follows:

Battery transmitter, each instrument per year....$10.00
Magneto-telephone, each instrument " " $10.00

Upon each instrument unlawfully detained from the Lessor, the second party shall pay ten dollars per month until satisfactory proof of its destruction be furnished; shall pay five dollars for each lost or destroyed otherwise than by fire or inevitable accident, and shall pay the expenses of ordinary repairs; but said payments shall not confer any right to the instrument, nor to its use, nor satisfy any other breach of covenant, nor impair the right of the Licensor to obtain possession of any instrument or lines.

(9) The Licensor may enter the offices and connect with the exchange systems of the second party any lines to points without the territories of such Exchanges
1700 respectively, and to telegraph offices, in order to establish communication between customers of the Exchanges and telegraph companies or parties reached by said lines, and may there operate said lines with suitable appliances; the second party will permit and encourage its customers to use such lines, and by its own operators will receive and transmit such messages to and from its customers and subscribers, or make the proper switch-board or other connections for direct communication, as may be requested, and in such manner, not inconsistent with the proper conduct of its office, as the Licensor shall direct. But if the Licensor is not satisfied with the manner in

which it is performed, it may establish its own offices and trunk and radiating lines for this purpose. The second party will not, without special leave of the Licensor, so far as it can lawfully prevent it, permit the transmission over such connecting lines of general business messages, market quotations, or news for sale or publication, nor any communications in behalf of other parties than those who directly communicate by the telephone by themselves or their servants or agents personally present at the instruments, and no person engaged in the business of transmitting messages for other parties shall be authorized or knowingly allowed by the second party to transmit such messages over such lines. The second party will cause each of its Exchanges to turn over and deliver to the Licensor and such parties as it may from time to time appoint, exclusively, all messages for electrical transmission to points outside the territory of such Exchange collected by or coming on the wires or within the control of the Exchange, where the Licensor or such party has wires and will transmit the same so far as the second party can lawfully control the same, and unless otherwise specially directed by its customers; but will not solicit such special directions, nor receive and pay tolls for transmission over other lines, unless compellable by law so to do. It shall keep and furnish an account of each such message transmitted or received, and of connections made therefore and shall collect and on demand pay over to the Licensor or its
1701 said appointees, respectively, the tolls for transmission beyond the exchange system, according to such rates and rules as each shall establish, and shall exhibit its accounts and the tickets from which they are made, so far as may be proper to verify the same. Each Exchange shall, if and when so requested by the Licensor, make proper switch-board or other connection between the lines of the Licensor or its Licensees from points without its exchange district and terminating in such exchange office, for

the purpose thereby of making up a through line between points without such exchange district. In respect of all the business provided for by this section, the second party shall make no charge to its own subscriber or customer, but shall make the following charges and none others; the second party shall receive upon communications originating within an Exchange and passing over the lines of the Exchange and the extra-territorial lines by direct connection, fifteen per cent of the gross tolls on the extra-territorial line not to exceed five cents for any one message or communication occupying not more than five minutes; in case an Exchange shall be required to make a switchboard connection for the purpose of making up a through line between points without its exchange district, then the Exchange shall receive as compensation for making such connection, such share of the through toll (terminal expenses being first deducted) as may be agreed upon, not however a greater share thereof than ten miles is of the whole length of the through lines so made up, and not in any event to exceed five cents for any one communication occupying not more than five minutes; upon messages collected by an Exchange over its lines or otherwise and forwarded by telegraph, the Exchange shall receive fifty per cent of the commission paid to the Lessor by the telegraph company, and the whole of the compensation for messenger service paid by the telegraph company; for delivering teleraph messages by telephone to subscribers, *and* Exchange may have free use of the Lessor's line to the telegraph office, when such use does not interfere with the
1702 proper despatch of outgoing business, and may receive from the telegraph company the whole of such compensation as it and the telegraph company may agree upon; for messages delivered by messenger for the telegraph company, it may receive the whole compensation. The Licensor now appoints the Western Union Telegraph Company to perform all telegraphic transmission under this article.

(10) If the second party shall fail to pay any sums due hereunder for thirty days after the same shall become payable, or shall violate any other terms or conditions of this contract, or of a contract preliminary hereto between the same parties dated July 27th, 1889, and shall persist in such default, violation, or neglect, or fail to remedy or repair the same for sixty days after written notice thereof from the Licensor, or shall become bankrupt or insolvent, the Licensor may, if it shall so elect, by written notice to the second party (or those in charge of any of its offices), terminate all rights granted by the Licensor hereunder, and thereupon may by its agents sever the circuit on which any telephone is placed, and take possession of and remove the telephone, and for that purpose may enter the premises of the second party and all persons claiming under it; or it may collect, from any sub-lessee or subscriber, all sums then or thereafter due to it or to the second party for the use of any instruments, circuits, and appliances, or under any subscription contract; or it may, so long as it shall see fit, leave in the enjoyment and use of the telephones any subscriber or other person in actual possession, and collect from him such sums as may then and thereafter be or become due for the use of the telephone and exchange lines, appliances, and services, and for that purpose shall be entitled to and may take possession of all the lines, fixtures, apparatus, appliances, and premises of the second party used for carrying on its business, and occupy and operate the same in connection with said telephones and those of additional customers as exchange system, or connect such lines with offices of its own for that purpose; the
1703 Licensor shall have the like right upon and within three months after the termination of the rights of the second party hereunder by efflux of time or otherwise; and may enforce these provisions by an entry, without being deemed guilty of any trespass, or by legal process, including an injunction to prevent any interference with the

Licensor (and others permitted by it) in the use of said telephones, lines, switch-boards, and appliances. The property as taken, and which does not belong to the Lessor or revert to it hereunder, may be returned within three months from the taking, in which case it shall pay to the second party a reasonable compensation for its use, or the Lessor may retain the same as its own property and shall pay therefor a reasonable price (not exceeding the actual cost) within four months after the taking, and shall account to the second party for all sums collected, which accrued before the Licensor became so entitled to possession, deducting all expenses incident thereto and all that may be due it. The Lessor also reserves all its right and remedies in law and in equity, under the patent laws or otherwise, including the remedy by injunction against the second party or those claiming under it, for the use of any of its patented inventions or instruments not justified by a subsisting license hereunder, or for the violation of any other of its rights. These rights and remedies of the Lessor shall, in case of any default, if the Lessor shall so elect, apply only to the Exchange or Exchanges in which such default has occurred. The Lessor may also use the name of the second party to protect its interests and to enforce its rights hereunder, and the second party shall execute assignments in accordance herewith.

(11) This contract is personal to the second party herein named, and any assignment or attempt to assign it, or the rights granted or lines established hereunder or any or either of them, by act of the party or operation of law, without the written consent of the Licensor, will be violation hereof, and a good ground for a cancellation hereof by the Licensor; The party of the second part promises that it will keep and observe all the stipulations herein contained on its part to be kept and performed. When-
1704 ever the Licensor grants to others the rights for connecting lines or any other rights remaining to it,

the stipulations hereof relating hereto shall be binding upon and enure to the benefit of such grantees, and the Licensor shall not be responsible for their acts or defaults. If the Licensor shall transfer to any party who shall agree to perform the stipulations hereof its title to the telephones hereby leased and the patent rights under which they are licensed, and its then existing interests hereunder, it is agreed that the provisions hereof enure to the benefit of and are binding upon such party in respect of all things done or to be done after such assignment, as if it were named a party hereto, and this said American Bell Telephone Company shall no longer be responsible hereunder.

The Licensee also agrees that it will not allow any telegraph company to use or to have any rights, or poles or other structures leased or put up by or belonging to or under the control of said Licensee without the written assent of the said American Bell Telephone Company.

Touching the lines which the first party may desire and direct to be built connecting the Exchanges of the second party with the Telegraph Offices of the Company or Companies which the first party may appoint to receive the telegraph messages to be turned over by said second party.

Whereas the first party has at the request of the second party in consideration of its undertaking hereinafter in this paragraph contained consented to increase the part to be paid the Exchange of the commission paid the first party by the Telegraph Company upon messages turned over from Twenty-five (25) per cent to Fifty (50) per cent thereof:

Now the second party in consideration thereof agrees that it will at its own cost and without charge or expense to said first party build, equip and maintain such lines and furnish all instruments necessary to be used for the operation thereof, except telephones to be used in the
1705 telegraph office, but that such lines when built shall become and remain the property of said first party.

Discount on telephones as given in surrendered contract (as per Exhibit A) to continue until June 1st, 1891.

*The following erasures viz.: eight (8) words on line 22, two (2) letters two (2) figures and one (1) word on line 23, ten (10) words and one (1) figure on line 56, one (1) word on line 170, four (4) words on line 217, all the words on lines 218 and 219, and six (6) words on line 220, and the following interlineations viz.: "fifty" on line 170 and "or of a contract preliminary hereto between the same parties dated July 27th 1889" on line 179, were made before signature by either party.

Signed in duplicate on the day first above written.

[Seal A. B. T. Co.]

THE AMERICAN BELL TELEPHONE CO.,

(Sd.) By JOHN E. HUDSON,

(Sd.) C. J. F.,

President.

[Seal Sowestn. Co.]

THE SOUTHWESTERN TELEGRAPH AND TELEPHONE CO.,

(Sd.) By LEVI SPRAGUE,

Prest.

(Sd.) CHAS. J. GLIDDEN,

Secy.

Contract for Extra-territorial Connecting Lines between American Bell Telephone Co. and Southwestern Telegraph & Telephone Co., dated July 27, 1889 (Rec., Vol. II, 889).

Form 113D.

Contract for Extraterritorial Connecting Lines.

This agreement, made this Twenty-seventh day of July, A. D. 1889, by and between the American Bell Telephone

*This paragraph refers to interlineations in the printed form on which the original agreement was made.

Company, a corporation duly formed under the laws of Massachusetts, Lessor and Licensor, of the first part, and the Southwestern Telegraph and Telephone Company, a corporation created under the laws of the State of New York, lessee and Licensee, of the second part, witnesseth:

1. Said Licensee desires to obtain the right to use upon lines between telephonic exchange districts established or which may be established in the following described territory, viz.:

The State of Arkansas and Texas, telephones to be obtained from *from* the Lessor and under lease- and license from it, under its two patents granted Alexander
1706 Graham Bell, No. 174,465, dated March 7, 1876, and 186,787, dated January 30, 1877, and under other patents which it may hereafter own or have the right to use, applicable thereto; and also to avail itself of and enjoy the right of connecting with the exchange systems established within said territory, as provided and stipulated in favor of the Lessor in its exchange contracts for these systems, (copies of which stipulations have been furnished to the Licensee, and the terms of which he is to conform to so far as they relate to business to be done hereunder) and of connecting with exchange systems which may hereafter be established in exchange districts in said territory, under contracts to be made by the Lessor therefor, to contain stipulations substantially like those in the Lessor's Standard Form 109 C, a copy of which has been furnished to the Lessee, and wishes to use, and allow others to use, said lines for personal communication between persons in different exchange districts in said territory; now it is agreed:

(2) Said second party shall by the establishment of such lines, so far as it is authorized so to do by this contract, satisfy all reasonable demands of the public therefor, and shall be diligent to increase the number of its said lines.

The rights hereby granted to the Lessee shall be perpetual unless determined as hereinafter provided:

3. The Lessee may construct lines between exchanges in said territory, and may use such lines for telephonic personal communication between a customer in one such exchange district and a customer in another such exchange district, and not otherwise, except in connection with lines mentioned in Article 6 hereof owned or specially licensed by the Lessor, and by it designated for that purpose, and then only as and for the purposes expressed in said Article 6. The Lessee shall not directly or indirectly connect its lines with any telephone or telegraph line or telephone exchange, except lines with which it has been by the Lessor specially authorized to connect; nor deliver messages to be forwarded to designation by telegraph to any telegraph company, except such as may be specially
1707 designated by the Lessor for that purpose, so far as it can lawfully control the same, or unless specially directed by a customer so to do (but it will not solicit such special direction nor receive and pay tolls over other lines unless compellable by law so to do). For the purpose of establishing telephonic personal communication between customers as aforesaid, the Lessee may have and exercise all the right to construct and operate telephone lines in said districts, and there maintain suitable offices and connect with exchange systems established or to be established, as aforesaid, which the Lessor has reserved and is or may be entitled to grant for extraterritorial connecting lines under licenses to exchanges made or to be made as aforesaid; but the Lessee shall connect with each local exchange and do its business so far as the same can, in the opinion of the Lessor, conveniently be so done, with the customers thereof through said exchange, unless the American Bell Telephone Company, or its successors, shall decide that the exchange fails to furnish proper facilities, for the purpose of this contract an exchange district means a

territory, not to cover more than a single town or city, or a circle of fifteen miles radius measured from a central point, which the Licensor has included and covered or may hereafter include and cover in and by an exchange license.

4. The Licensor, at its general office or factory, will deliver to the Lessee, as called for, electric speaking telephones, made and to be used under its patents during the existence of the rights hereby granted and as herein set forth and permitted, and all telephones delivered to the Lessee during the continuance hereof shall be deemed to be furnished hereunder, unless otherwise specially designated by the Licensor. They will be of such character and pattern and bear such marks as the Lessor shall from time to time determine, but the Lessee may choose from among such standard patterns. Each of said telephones shall remain the property of the Licensor, and is hereby leased, and the use of it is hereby licensed for the purposes herein declared for the term of one year from the day when rent and royalty begins to accrue on it, as herein pro-
1708 vided; but the due payment thereof to the Licensor, and the due performance of the stipulations hereof during said year by the Lessee and those using the telephone under it, shall ipso facto operate to renew the lease and license for another year, and so on until the determination hereof. The licensee shall pay to the Licensor seventy (70) per cent of the telephone rental and royalty which shall be fixed from time to time by the Licensor (being a discount of Thirty (30) per cent), to commence on each instrument on the first day of the second calendar month after its shipment by the Licensor, to continue until the instrument shall be put into the possession of the Licensor, or proved to be destroyed, and to be paid in equal monthly payments in advance at the Licensor's office, on the tenth day of each month up to the last day of the same month. Until otherwise fixed, the rates shall be as follows:

Battery transmitter, each instrument per year.... $10.00
Magneto-telephone, each instrument " " $10.00

Upon each instrument unlawfully detained from the Lessor, the Lessee shall pay five dollars per month until satisfactory proof of its destruction be furnished, and five dollars for each lost or destroyed otherwise than by fire or inevitable accident, and shall also bear the expense of ordinary repairs; but said payments shall not confer any right to the instrument, nor to its use, nor satisfy any other breach of covenant, nor impair the right of the Licensor to obtain possession of any instrument or lines.

5. The right and license hereby granted is the right and license to use said telephones to carry on personal communication, upon their own business, by and between customers, and their employes personally present at instruments in different exchange districts within the territory above described, over circuits composed exclusively of said authorized lines owned by the Lessee and the lines of the exchange licensed by the Licensor, and with which the Licensee is authorized to connect as aforesaid, and between any such customer and a customer so using the tele-
1709 phone in a place with which the second party is not hereby authorized to connect, by means of such lines of the Lessee, and other lines and instruments specially licensed by the Licensor therefor; but the telephones furnished hereunder are not to be used to connect parties in the same exchange district, nor for the transmission of general business messages, market quotations, or news for sale or publication, in competition with the business of any telegraph company; and the Lessee, so far as it can lawfully and properly prevent it, will not permit the same to be so used. The term "general business messages" is defined to mean all communications in behalf of other parties than those who directly communicate by the telephone by themselves or their servants or agents personally present at the instruments, and no person engaged in the busi-

ness of transmitting messages for other parties shall be authorized or knowingly allowed by the Lessee, its servants or agents, to transmit such messages through the telephone. The Lessor will not furnish or license telephones to any other party to establish such personal communication between persons in different exchange districts, both of which are within said territory, while the rights of the Lessee hereunder exist, except so far as the Lessor's existing contracts with the Western Union Telegraph Company, and with others, may require it so to do, or as it may see fit so to do under contracts hereafter to be made for private, club, social, and other lines substantially as defined in its Standard Form No. 116 B, but the Lessee shall furnish sufficient general lines for general customers, and special lines for individual or associated customers, between exchange districts throughout said territory, and for the purposes aforesaid, at prices which shall be reasonable under the circumstances hereunder.

6. The Lessor will license to be used with such telephones the inventions in call bells, switches, switch-board, and other apparatus needed for such telephone lines, which it can so license, upon such royalties as it may from time to time establish, not greater than these fixed for 1710 others under similar circumstances, but such call bells, switches, switch-boards, and other apparatus shall be used only with telephones licensed by the Lessor, and the Lessee agrees not to use them otherwise, nor to dispose of them to any one except to those so licensed, or to the licensed manufacturers of the Lessor. The Licensee may enjoy any rights of way and similar franchises to maintain said lines which the Lessor can permit him to use, when and so long as, in the judgment of the Lessor, it shall not interfere with the enjoyment thereof by the Lessor or its other grantees, and shall pay whatever may be due to third persons, if anything, growing out of or in connection with such use by it. The Lessor reserves the

right to use telephones on lines passing over the routes or any or either of them of the lines hereby licensed, and connecting, with each other or with said exchanges, places with which the Lessee is not hereby authorized to connect, for the purpose of establishing personal communication or transmitting messages between such places and between such places and said exchanges, and, to establish lines for that purpose, may enjoy any rights of the Lessee to erect and maintain lines, and may string its wires on the poles of the Lessee, paying therefor a pole rental of $4.00 per mile per annum for each wire. The Lessee will also allow the Lessor to connect the wires of any such lines with its said lines in order to constitute thereby a through line, of which the Lessee's lines or any or either of them or any part of either of them can form a portion or link, in order to forward through messages, will make or permit to be made convenient switchboard or other connections for that purpose, and as compensation therefor will take a share of the through toll (terminal expenses being first deducted) pro rata according to distance, not greater than that customarily charged by it for like distance, and will also allow any telephone exchange to be designated by the Lessor to connect with its lines for the purpose and substantially in the manner described in said Standard Form 109 C. In respect of all communications originating on its lines and which are to be forwarded over any other lines, the
1711 Lessee shall require the customer or subscriber to bind himself by and make every message subject to such contracts, stipulations and limitations of liability of such other lines as the Licensor may from time to time require, in such form as it may from time to time prescribe, and will hold the Lessor harmless from all loss or expense consequent upon its failure so to do.

7. The Lessee admits the validity of all patents relating to telephony and telephonic appliances, now or hereafter held by the Licensor, or under which it may hold

licenses exclusive in their character and the validity of its title thereto, and will not dispute the same nor make, use, or be interested in any telephones or telephonic lines or business not licensed by the Licensor or its assigns.

8. The Lessee will pay to the exchanges established, or which may hereafter be established, and with which it shall connect as aforesaid, such sums as such exchanges are or shall be entitled to receive under their exchange contracts, made or to be made, for making connections with extra-territorial lines. And the Lessee will also pay to the Lessor, in addition to said telephone rental and royalty, and in consideration of the further rights and privileges hereby granted, fifteen (15) per cent of the Lessee's gross receipts from subscriptions and tolls (which tolls shall not be less than at the rate of fifteen cents for the first ten miles or fraction thereof and five cents for each additional ten miles or fraction thereof for a communication occupying not more than five minutes), and from other sources, after deducting for terminal expenses such sums as it may have to pay to the terminal exchange not exceeding those chargeable under exchange contracts made or to be made by the Licensor as aforesaid. Said payments are to be made to the Lessor at its office on the tenth day of each month, upon all receipts up to the first day thereof. The Lessee shall keep full accounts of such receipts and payments, furnish copies thereof to the Licensor upon request, and exhibit its original accounts and vouchers so far as may be proper to verify the same.

9. The lines to be built hereunder shall be sufficient and suitable for the purposes contemplated hereby.

1712 10. The Lessee may place the telephones furnished hereunder in its own offices, for use, by general customers, as herein stated and limited, or may place them under subleases and licenses in connection with its lines, on the premises of subscribers or special customers for

such use. Such subleases and licenses shall, in such form as the Licensor shall from time to time approve, express the title of the Licensor to the Telephone and the patents, the extent of the license hereby granted, the purposes for which the telephone may be used, that any other use of any telephone by any person, or non-payment of the rental and royalty to the Licensor, is an injury to and invasion of its rights as owner thereof and of the patent rights used therein and thereby, and entitling it to all rights and remedies in law and in equity, under the patent laws and as herein expressed otherwise, including the remedy by injunction against the person in possession thereof, and all others who have misused the same as aforesaid for any use not justified by a subsisting license, or for the violation of any other of its rights. It may also enforce against such sub-licenses all rights and pursue all remedies given by and under such sub-license, and may use the name of the Lessee for such purpose, or may require the Lessee, at his own expense, to enforce the terms of such contract.

11. If the Lessee shall fail to make any of the payments herein stipulated when due, or shall fail to keep any of the terms hereof, or of a contract preliminary hereto between the same parties dated July 27th, 1889, and such default shall continue during a period of sixty days after written notice thereof from the Lessor, or shall become bankrupt or insolvent, the Licensor may, if it shall so elect, by a written notice to the Lessee (or those in charge of any of its principal offices) terminate all rights granted by the Licensor hereunder, and by itself or those designated by it for the purpose, by due process of law or by actual entry, may and shall be entitled to repossess itself of the rights and privileges herein granted, and thereafter use and enjoy the same; and especially may take possession of and remove said telephones, or sever the wires to which they are connected, and connect its own wires to said severed wires,

telephones, and apparatus, and use the same by itself
1713 and by those whom it may permit; or it may, so long as it shall see fit, leave in the enjoyment and use of the telephones any person in actual possession, and collect from him such sums as are or may become due for the use of the telephones, wires and appliances, used therewith, and for that purpose shall be entitled to and may take possession of all the lines, fixtures, apparatus, appliances and premises of the Lessee used for carrying on this business, and occupy and operate the same in connection with said telephones and other telephones connected or to be connected therewith, or connect such lines with offices of its own for that purpose. The Licensor shall have the like right upon or within three months after the termination of the rights of the Licensee hereunder by efflux of time or otherwise; and may enforce this provision by an entry without being deemed guilty of any trespass, or by legal process, including an injunction to prevent any interference with the Licensor and others permitted by it in the use of said telephones, lines and apparatus. The property so taken and which does not belong to the Lessor or revert to it hereunder may be returned within three months from the taking, in which case the Lessor shall pay to the Lessee a reasonable compensation for the use thereof, or the Lessor may retain the same as its own property, and shall pay therefore a reasonable price, in no case exceeding the actual cost, within four months after the taking, and shall account to the Lessee for all sums collected which accrued before the Licensor became so entitled to possession, first deducting all expenses incident thereto, and all that may be due from the Lessee to it. The Lessor also reserves all its rights and remedies in law and in equity under the patent laws or otherwise, including the remedy by injunction against the Lessee or those claiming under it, for the use of any of its patented inventions or instruments not justified by a subsisting license hereunder, or for the vio-

lation of any other of its rights. The Lessor may also use the name of the Lessee to protect its interests and enforce its rights hereunder, and the Lessee shall execute assignments in accordance herewith.

1714 12. This contract is personal to the Lessee herein named, and any assignment or attempt to assign the same or the lines established hereunder, or any or either of them, by act of the party or operation of law, without the written consent of the Licensor, shall be violation hereof, and good ground for a cancellation hereof by the Licensor; The party of the second party covenants that he will keep and observe all the stipulations herein contained on his part to be kept and performed. Whenever the Licensor grants to others the rights for exchange or any of its rights under Article 6 hereof or any other rights remaining to it, the stipulations hereof relating thereto shall be binding upon and enure to the benefit of such grantees, and the Licensor shall not be responsible for their acts or defaults. If the Licensor shall transfer to any party who shall agree to perform the stipulations thereof, its title to the telephones hereby leased, and the patent rights under which they are licensed, and its then existing rights hereunder, it is agreed that the provisions hereof enure to the benefit of and are binding upon such party in respect of all things done or to be done after such assignment, as if it were named a party, and that said American Bell Telephone Company shall no longer be responsible hereunder. Words herein referring to the party of the second party shall be taken to be of such number and gender as may be required.

Discount on telephones and proportion of extra-territorial receipts as given in surrendered contract (as per Exhibit A) to continue until June 1st, 1891.

*The following erasures, viz.: six (6) words on line 32,

*This paragraph refers to interlineations in the printed form on which the original agreement was made.

three (3) figures and one (1) word on line 33, four (4) words on line 67, nine (9) words and one (1) figure on line 68, nine (9) words on line 69, two (2) words on line 149, eight (8) words on line 159, all the words on lines 160, 161 and 162, nine (9) words on line 215, all the words on lines 216 and 217, and (1) word on line 218, and all the words on line 229, and the following interlineations, viz.: "Seventy (70) per cent of the telephone rental and royalty which shall be fixed from time to time by the Li-
1715 censor (being a discount of Thirty (30) per cent)," on line 69, "fifteen (15) per cent" on line 149, "or fraction thereof" and "from other sources" on line 152, and "or of a contract preliminary hereto between the same parties dated July 27th, 1889" on line 181, were made before signature by either party.

Signed on the date first above written in duplicate.

[Seal Am. Bell Tel. Co.]
THE AMERICAN BELL TELEPHONE CO.,
(Sd.) C. J. F.
(Sd.) By JOHN E. HUDSON,
Its President.

[Seal So. Westn. Co.]
THE SOUTHWESTERN TELEGRAPH AND TELEPHONE CO.,
(Sd.) By LEVI SPRAGUE,
Prest.
(Sd.) CHAS. J. GLIDDEN,
Secy.

Contract for Private Line Service between American Bell Telephone Co. and Southwestern Telegraph & Telephone Co., dated July 27, 1889 (Rec., Vol. II, 896).

Form 116-C.

This agreement, by and between the American Bell Telephone Company of Boston, Massachusetts, a corporation

established under the laws of said State, Lessor and Licensor, of the first part, and The Southwestern Telegraph and Telephone Company, a corporation created under the laws of the State of New York, of the second part, witnesseth:

1. Whereas, the Lessor owns the patents of the United States granted to Alexander Graham Bell, March 7, 1876, and January 30, 1877, numbered 174,465 and 186,787, respectively, and owns or has the right to use, and may hereafter own or have the right to use, sundry other inventions, which are or may be embodied in electric speaking telephones, now, for the purpose of supplying and placing telephones to be used for the purposes, and as hereinafter set forth, upon private lines, club lines, social lines, and lines for speaking-tube purposes, which are entirely within the following described territory, viz.:

The States of Arkansas and Texas; it is agreed:

2. The private line referred to in this contract is a line consisting of only a single circuit which shall not be permanently nor temporarily connected with any other circuit, and the telephones on which shall be used only for
1716 the individual and private business of the Lessees, and only by them and their employees; and which line shall not extend more than twenty-five miles beyond the municipal limits of the city or town in which one end of the line is situated, and which shall not be used for more than four individuals, firms or corporations, and which shall not have more than eight stations, and upon which no business shall be transacted for any consideration or toll to be paid by other persons than the Lessees, or other parties named in the lease of telephones, not exceeding said number, and over which shall be transmitted no business messages, market quotations or news for scale or publication, or messages in respect of which, or of the transmission, collection, delivery, publication, sale or use

of which any consideration or toll is to be paid by any other person.

3. A club line is a line consisting of only a single circuit, connecting not less than five individuals, firms or corporations, without regard to the number of stations, or having not less than nine stations, without regard to the number of parties connected, all the stations of which are within the same municipality, or within five miles of its principal post office, and which is used by not more than one party at each station. In other respects, the use is limited as above stated for private lines.

4. A social line is a line consisting of a single circuit only, which shall not be permanently or temporarily connected with any other circuit, all the stations of which are within the same municipality and the telephones on which are to be used only for connecting persons and families for social and household purposes, and by not more than one party at each station.

But no one of the stations of a private line or of a club line or of a social line shall be used as an exchange office, or be provided with a switch-board or equivalent apparatus to be used in connection with said line, nor can said line be permanently or temporarily connected with a telephone exchange system, or with another circuit, nor with a telegraph office, without special leave of the Lessor. In case any station shall, by such special leave, be located
1717 at a telegraph office, customers may be allowed to use the line to receive and transmit their telegraphic messages, so far as may be expressly permitted by a written license which they shall agree to, and which shall conform to the following terms, viz.: Each person so using said lines makes and constitutes the operator at the telegraph office his agent, without pay and without liability, to write upon the ordinary message blanks of the telegraph company all messages to be sent, to send them at the rate

for unrepeated messages, to receive and receipt for all messages received for him, and to sign his name to the contracts limiting the liability of such telegraph company set forth on such blanks; and will pay to said telegraph company all tolls on messages so sent, and all tolls on unpaid messages received for him; and he assumes all risk of error or mistake in the reception, repetition, delivery, non-delivery or misdelivery of messages sent or intended to be sent over said telephone line.

5. Speaking-tube telephones are telephones of the kind especially constructed and designated for that purpose, and which are allowed to be used only to connect stations, all of which shall be on the same premises of one individual, firm or corporation, without passing over the land of any other person (except a road or water-course); or they may be allowed to be used for connecting a licensee's house, stable and other domestic or farm buildings by passing over intervening land, provided that all stations connected by a speaking-tube line are to be within one circle of less than half a mile in diameter.

6. If telephones are desired for uses and upon lines other than herein defined, special application must be made to and special leases and licenses obtained therefore from the American Bell Telephone Company; and the provisions hereof shall apply to such other telephones furnished to the second party so far as they can be applied, subject to the provisions of such special licenses. By special leave of the Lessor, one station of a club line or of a private line or of a social line may be maintained in a tele-
1718 graph office by consent of the telegraph company; but they are only licensed for this purpose so far as and upon the terms and conditions expressed in Article 4 hereof; and when so licensed or used, such station and the business done by and from it shall be under such regulations as the Lessor shall from time to time prescribe; and the party of the second part shall receive twenty-five

per cent, and the party of the first part seventy-five per cent of whatever the Western Union Telegraph Company (or any other company specially designated by the Lessor) may pay for the collection and delivery of, and as commission upon the telegraphic messages collected or delivered through such telephone line.

7. The Licensor, at its general office or factory, will from time to time deliver to the second party as needed, but not exclusively, electric speaking telephones, during the existence of this contract, to be used upon such lines for such purposes; they shall be of such standard character and pattern and bear such marks as the Licensor shall from time to time determine, but the second party may select which it prefers among said patterns (except for speaking-tube purposes as aforesaid): the Licensor will also license, to be used with such telephones, the inventions in call-bells, switches and other apparatus needed for such telephone lines, which it can so license, upon such royalties as it may from time to time establish, not greater than those fixed for others under similar circumstances; but such call-bells, switches and other apparatus shall be used only with telephones licensed by the Lessor, and shall not be disposed of to any one except those so licensed or to the licensed manufacturers of the Lessor. Each telephone shall remain the property of the licensor, and may be used by suitable customers to be selected by the second party upon such lines for the purposes herein set forth, under lease and license from the licensor and lessor to such customers such lease and license to be furnished by it for each customer, in such forms and upon such terms, conditions and rental, and for such periods as the Licensor may from time to time determine; each lease and license to be
1719 countersigned by the said second party, and to be signed by each customer upon whose premises telephones are to be placed. Said telephone rentals and royal-

ties shall belong to and may be collected by said American Bell Telephone Company in its own name; non-payment thereof to the said company, or any use of the telephones otherwise than is herein permitted, is an injury to and invasion of its rights as owner of the instrument and of the patent rights used therein and thereby, and entitling it to all rights and remedies in law and in equity, under the patent laws and as expressed herein and in licenses to be granted in pursuance hereof and otherwise, including the remedy by injunction, against the person in possession thereof and all others who have misused the same as aforesaid for the use of any of its patented inventions or instruments not justified by a subsisting license hereunder, or for the violation of any other of its rights.

If the said lines belong to the second party, it may also charge to the customer a sum not exorbitant nor unusual for the use of such lines and the apparatus and appliances other than telephones used therewith. The second party shall, on each pay-day, report the names and locations of each new customer, all licenses issued and all removals of instruments, and give such other information respecting the business as the Licensor may call for, all in such form as it may request, and shall transmit to the Licensor the leases signed by customers as aforesaid. The lessor reserves the right to refuse to furnish telephones to any party who in its opinion is likely to use them in a manner contrary to the provisions hereof, or to the obligations of the Lessor to other parties.

8. The party of the second part shall pay, or cause to be paid, to the Licensor a rental and royalty at the rate per instrument of the following percentages of the telephone rental and royalty fixed by the Licensor in accordance with this contract:

Telephones for private lines Seventy (70) per cent (being a discount of Thirty (30) per cent):

Telephones for club lines Seventy (70) per cent (being a discount of Thirty (30) per cent):

1720 Telephones for social lines Seventy (70) per cent (being a discount of Thirty (30) per cent):

Telephones for speaking-tube lines Seventy (70) per cent (being a discount of Thirty (30) per cent):
to commence on each telephone on the first day of the second calendar months after its shipment by the Licensor, to continue until the instrument shall be put into the possession of the Licensor, or proved to be destroyed, and to be paid in equal monthly payments in advance at the Licensor's office, on the tenth day of each month up to the last day of the same month. Until otherwise fixed the rates shall be as follows:

For private lines:

Battery transmitter, each instrument.....per year $10.00
Magneto-telephone, each instrument.....per year $10.00

For club lines:

$10 per year for each battery transmitter, and $10 per year for each magneto-telephone, where only one instrument is used at a terminal or station; where a pair of instruments, composed of a battery transmitter and a magneto-telephone, are used at one terminal or station, $15 per year for each pair so used.

For social lines:

Battery transmitter, each instrument.....per year $7.50
Magneto-telephone, each instrument per year..... 7.50

For speaking-tube purposes:

Speaking-tube telephone .....$5.00 each for one year
Speaking-tube transmitter .....$5.00 each for one year

Upon each telephone unlawfully detained from the Lessor the second party shall pay, or cause to be paid, ten dollars per month, until satisfactory proof of its destruction be furnished, and five dollars for each lost or destroyed other-

wise than by fire or unavoidable accident, and the second party shall bear the expense of ordinary repairs; but neither of said payments shall confer any right to the instrument, nor to its use, nor satisfy any other breach of covenant, nor impair the right of the Licensor to obtain possession by act of the party or legal process. Said second party, so long as it makes, or causes to be made, the payments herein stipulated, and keeps all the terms hereof, and of a contract preliminary hereto between the same parties dated July 27th, 1889, may collect the rentals and royalties from the customers hereunder for a period in advance not exceeding one year. Upon any default on its part
1721 which shall continue for more than thirty days after written notice thereof, the Licensor may, by written notice to it or by publication in some newspaper in the City of Austin, Texas, revoke said authority to collect, and revoke and cancel all the right and interest of every kind hereunder of the second party, and may, in its own name, or in the name of the second party if it shall deem such course more convenient, collect all rentals for telephones and lines furnished hereunder or in accordance herewith, whether then due or thereafter to become due, and take possession and remove all telephones furnished hereunder, subject to such rights as such customers may lawfully have under licenses to be granted by it in accordance with the terms hereof. For all rentals and royalties, so collected by the Licensor, and which accrued before the Licensor gave notice as aforesaid, it shall account to the second party, first deducting all that may be due from said second party to it, and expenses incident thereto.

9. In case any customer hereunder shall fail to pay the rental and royalty for the instruments delivered to him or shall use them otherwise than as provided in this license contract, or fail to return them when bound so to do, the American Bell Telephone Company may, if it sees fit, in its own name, or in that of the party of the second part, as it

may deem most convenient, have and exercise against said customer all the rights for redress and protection by act of the party or by process of law, which belong to it, as owner of the telephone and of patent rights to the inventions embodied therein or used thereby, or provided hereby or by any contract of such customer; or may require the second party to pursue all said last named contract rights and remedies to final judgment and execution, or other most advantageous process of the court, at his own expense.

10. The second party admits the validity of all patents relating to telephony and telephonic appliances now or hereafter held by the Licensor, or under which it may
1722 hold licenses exclusive in their character, and the validity of its title thereto, and will not make, use or be interested in any telephones or telephonic lines or business not licensed by the Licensor or its assigns.

11. The second party shall, without charge, promptly notify the Lessor of any parties using telephones not leased by the second party or the American Bell Telephone Company, giving name of party, description of instrument, and place where same is used, and any other information possible to obtain.

13. The second party covenants that it will be absolutely responsible for the acts and omissions of itself, its agents and servants, and that it will use good diligence and care to select sublicensees of a proper character, and to compel them to conform to the terms hereof. Whenever the Licensor grants to others any right remaining to it hereunder, the stipulations hereof relating thereto shall be binding upon and enure to the benefit of such grantees, and the Licensor shall not be responsible for their acts of defaults. If the Licensor shall transfer to any party, who shall agree to perform the stipulations hereof, its title to the telephones hereby leased and the patent rights under which they are licensed, and its then existing interests hereunder, it is

agreed that the provisions hereof enure to the benefit of, and are binding upon such party in respect of all things done or to be done after such assignment as if it were named a party hereto, and that said American Bell Telephone Company shall no longer be responsible hereunder. All words herein relating to the second party shall be deemed to be of such number and gender as may be required.

14. The rights of the second party hereunder shall be perpetual unless determined as provided in Article 8 hereof.

Discount on telephones as given in surrendered contract (as per exhibit A) to continue until June 1st, 1891.

*All the words on lines 172, 173, 174, 175, 176, 177, 178 and 179 erased, and the words "and of a contract preliminary hereto between the same parties dated July 27th, 1889" on line 142, were made before signature by either party.

1723 Signed in duplicate this Twenty-Seventh day of July, 1889.

[Seal Am. Bell Tel. Co.]

THE AMERICAN BELL TELEPHONE CO.

(Sd.) C. J. F.,

(Sd.) By JOHN E. HUDSON,

Its President.

[Seal Sowestn. Co.]

THE SOUTHWESTERN TELEGRAPH AND TELEPHONE CO.

(Sd.) By LEVI SPRAGUE,

President.

(Sd.) CHAS. J. GLIDDEN,

Secy.

*This paragraph refers to interlineations in the printed form on which the original agreement was made.

Contract between American Bell Telephone Co. and Southwestern Telegraph & Telephone Co., dated November 1, 1907, cancelling previous contracts (Rec., Vol. II, 901).

Memorandum of an agreement, made this first day of November, 1907, by and between The American Bell Telephone Company, incorporated under the laws of Massachusetts, of the first part, and The Southwestern Telegraph and Telephone Company, incorporated under the laws of New York, of the second part.

Witnesseth:

Whereas, said Companies entered into certain contracts dated July 27, 1889, in Forms 109-D, 113-D and 116-C, respectively, and also a contract preliminary thereto, bearing the same date, under which said The American Bell Telephone Company agreed to lease and license to said The Southwestern Telegraph and Telephone Company telephone instruments and to furnish to said Company certain other services and things, as expressed in said contracts and in certain contracts in Form 113-C, made subsequent to said date, and

Whereas said contracts have in certain respects become obsolete, and it is desired by the parties hereto to cancel the same and to make a new agreement in place thereof,

Now it is agreed:

That all contracts now existing between said Companies in Forms 109-D, 113-C, 113-D and 116-C, respectively, and said preliminary agreement, are hereby cancelled as of this date, but said The American Bell Telephone Company shall continue to furnish said The Southwestern Telegraph and Telephone Company telephone instruments, license
1724 their use, and the use of telephone appliances, so long as this agreement remains in force, under all patents now or hereafter owned or controlled by it, said The American Bell Telephone Company, and furnish other services

and things as heretofore, and said The Southwestern Telegraph and Telephone Company shall pay to said The American Bell Telephone Company the same consideration in money which it has heretofore paid under the terms of the letter of said The American Bell Telephone Company, dated November 21, 1902.

Said The Southwestern Telegraph and Telephone Company shall assume and pay any and all taxes, whether municipal, county, state or other, assessed on or on account of or by reason of the telephone instruments furnished hereunder.

Signed on the day first above written, in duplicate.

[Seal] THE SOUTHWESTERN TELEGRAPH AND TELEPHONE CO.

(Sd.) By H. J. PETTENGILL,
President.

[Seal] THE AMERICAN BELL TELEPHONE COMPANY,

(Sd.) By THEO. N. VAIL,
President.

Cancellation of the 15% Commission under the Extra-territorial Contract between American Bell Telephone Co. and Southwestern Telegraph & Telephone Co., dated May 11, 1898 (Rec., Vol. II, 919).

Copy.

The American Bell Telephone Company,
No. 125 Milk Street,
P. O. Drawer 2.

Boston, May 2, 1898.

Licensees of the American Bell Telephone Company:

Referring to the licenses for extra territorial connecting lines granted you by this Company, and to your agreement therein contained to pay this Company a portion or frac-

tion of the gross receipts from business done on such lines, this Company proposes to release you and does hereby release you upon your acceptance hereof, from your obligation to make such payment from business done after April 30, 1898.

Referring to the right reserved to this Company in
1742 the licenses for exchanges granted you by this company, to connect such exchanges with telegraph offices, and referring also to the arrangement made between us by which you receive one-half of the commissions payable to this Company by telegraph companies upon messages turned over to such telegraph companies by said exchanges (such arrangement having been made on the condition that at your own cost, and without charge or expense to this Company, you bill, equip and maintain the lines connecting such exchanges and telegraph offices and furnish all instruments necessary for the operation thereof except telephones and transmitters to be used in the telegraph offices, and that such lines when built become and remain the property of this Company). This Company now proposes, until further notice, to give you the full amount of such commission instead of one half thereof, provided you also furnish the telephones and transmitters to be used in the telegraph offices.

The net rate to be paid by you for each such telephone and transmitter shall be the lowest rate named in the circulars of January 31, 1894 (Form 457), and of February 15, 1895 (Form 477); that is, seventy-five cents per annum for each instrument. Such instruments will be included in the regular monthly bills at the gross rates named in said circulars.

Application for connection with telegraph offices must be made to this Company as heretofore.

Please give us early notice of your receipt and acceptance hereof.

Yours respectfully,

(Sd.) C. JAY FRENCH,
General Manager.

4½% Modification of 1902 (Rec., Vol. II, 922).

Copy.

American Telephone and Telegraph Company.

November 29, 1902.

The Southwestern Telegraph & Telephone Company, Dallas, Texas.

Gentlemen:

Enclosed herewith is a communication from The American Bell Telephone Company offering to accept, in lieu of the payments now made by you under your contracts with that Company by way of rental upon telephone instruments, a percentage of the total gross earnings of your Company, as defined in the circular.

This plan has been submitted to officers of practically all of the operating companies throughout the United States and seems to meet with general approval. It involves a substantial reduction in the amounts paid by the operating companies.

While I believe that the plan and the details as set out in the enclosed letter are entirely clear, I take the liberty of calling attention to some of the clauses in the letter, that their intent and purpose may be readily understood.

The second clause, as to the way in which the gross earnings of a sub-licensee company is which a Bell operat-
1745 ing company is interested shall be dealt with, applies only to a few cases throughout the country in which an operating company has acquired an interest in a sub-

licensee company. It is not impossible that other such cases may from time to time arise, and a rule should be established for dealing with them.

The methods of return and payment under this plan are assimilated as far as may be with those now in force.

The memorandum appended to the letter is for the sole purpose of securing uniformity of accounts and of methods of making up the gross earnings. The underlying principle on which the memorandum is based is, that the actual earnings of all telephones shall form part of the gross earnings, but that a telephone which is in fact free shall not be treated as if it contributed anything to the gross earnings.

It is only necessary to call attention to one provision of the memorandum, which is in the nature of a compromise.

It is easy to deal with the subjects-matter of clauses (*a*), (*b*), (*d*), (*e*), (*f*), (*g*), (*h*) and (*i*), for it is clear that the uses referred to in (*a*) and (*b*) involve the actual earnings, while those referred to in (*d*) to (*i*), inclusive, do not involve actual earnings of such a character as to be counted into the gross earnings.

The matter referred to in (*c*), however, are incapable of accurate analysis. In some such cases telephones are furnished to municipal or other public corporations for an actual value received, and in other cases there is no direct actual value received, although the importance and necessity of giving the corporation telephones for which no cash payment is made may be just as great as in the former case. In some cases the corporation has the right by law to exact free telephones as a condition of the grant of a franchise, in which case the telephone is leased for the actual value received; while in other cases the corporation has no such right, and therefore the furnishing of a telephone free or at a discount is a voluntary act on the part of the operating company, for which technically it cannot be said to

1746 receive real value. It seems clear, therefore, that it is better to adopt an arbitrary rule covering all cases in which telephones are supplied to municipal or other public corporations without payment or at a discount, and the plan adopted, as stated in the memorandum, is that in all such cases, whatever may be the circumstances or conditions, such telephones shall be counted as contributing to the gross earnings of the operating company at the rate of nine dollars a year unless a larger sum is actually received in cash.

This compromise meets with the approval of the operating companies to whom it has been submitted. The matter is of small moment, and it is dealt with only that there may be a uniform basis upon which the returns and payments shall be made by all companies.

It is believed that the advantages of the new plan over and above the reduction involved, will be apparent. It is fair and simple and will result in the elimination of a great amount of bookkeeping that is now necessary in order to determine the telephone rentals and rebates.

I will add that it is our expectation to relieve the operating companies from the obligations of keeping a record of each telephone instrument by its serial number as is required at present. This, however, will form the subject-matter of a subsequent communication.

For convenience, I enclose also a form of vote that would be a proper form by which to indicate your assent to the plan set out in the letter.

Very truly yours,

(Sd.) F. P. FISH,
President.

Copy.

Resolution to be Passed by the Board of Directors of the Southwestern Telegraph and Telephone Company as to Letter from the American Bell Telephone Company Dated November 21, 1902.

A letter dated November 21, 1902, from the American Bell Telephone Company, was presented, offering to
1747 substitute for the amount payable by this Company under its license contracts by way of rental upon telephone instruments, four and one-half per cent (4½%) of the total gross earnings of this company, as defined by said letter and the memorandum appended thereto, and thereupon it was

Voted: that such offer be accepted and that the President be authorized in the name and behalf of this Company to notify The American Bell Telephone Company of the acceptance thereof.

Copy.

The American Bell Telephone Company.

November 21, 1902.

The Southwestern Telegraph and Telephone Company, Dallas, Texas:

The American Bell Telephone Company hereby offers, until further notice, to substitute for the rental upon telephone instruments (magneto telephones and battery transmitters) payable by you under its license contracts held by you and circulars in modification thereof, four and one-half per cent (4½%) of the total gross earnings of your company, and of any sub-companies through which you may operate, from exchange, toll and private line business and from all other business done in your territory in the operation of which telephones are now or may hereafter be used, including your receipts from sub-licensees.

If in any case you have acquired, or shall hereafter acquire, any interest in a sub-licensee company operating in

your territory, a portion of the total gross earnings of such company proportionate to your said interest shall be treated as a part of your total gross earnings in lieu of a like proportion of your actual receipts from that company.

The amount due for each month will be determined by the total gross earnings of the second preceding month computed as herein provided.

Said percentage will cover all instruments in use by you or under your authority in your territory, including instruments used on switchboards or for other operating purposes and those for which no consideration is received by
1748 you, and also will cover those in stock, which last are not to exceed three per cent (3%) of the total number charged to you. It is understood that you will use your best endeavors to limit the number of instruments to the needs of the service.

All instruments charged to you on the last day of any month in excess of the number in use and such three per cent in stock will be rates as earnings seventy-five cents per month each instrument, and the amount of such rated earnings will be included in your total gross earnings for that month in determining the amount to be paid by you.

A statement, over the signature of the proper accounting officer of your total gross earnings for each calendar month, computed as herein provided, with the number of instruments in use and in stock in your territory on the last day of that month, must be sent to the Treasurer of this company on or before the last day of the next succeeding month, and payment in Boston or New York funds be made on or before the tenth day of the following month, that being the month for which such payment is due.

Further statements of instruments will be made by you at such times and in detail as this company may from time to time require.

You are requested to give us early notice of your receipt and acceptance hereof, with a certified copy of the vote of your directors authorizing such acceptance.

This offer when accepted will not become binding until this company shall declare the plan effective, and upon such declaration shall take effect as of January 1, 1902. It shall not be construed to interfere with any adjustments of rental to which you may be entitled for periods previous to said date.

In order that the method of computing total gross earnings may be uniform, the memorandum hereto appended is to be read as part of this letter.

Yours *respectively,*

(Sd.) C. J. FRENCH,
General Manager.

Copy.

MEMORANDUM.

1749 In determining the total gross earnings hereinbefore referred to, the following special cases shall be treated as hereinafter indicated and methods of accounting for this purpose should be arranged accordingly.

There shall be included in such total gross earnings the value of service, rebates or discounts allowed:

(*a*) To corporations, other than public corporations, or to firms or persons, in return for pay station privileges, transportation, pole locations, attachments, rights of way, advertising, retainers and services, and generally in consideration of rights of value of any kind.

(*b*) "Municipal or other public corporations in satisfaction of taxes, assessments of rates legally imposed.

(*c*) "Municipal or other public corporations in return for franchise, rights of way, pole locations, and generally for rights and privileges, of any kind, or as a matter of

courtesy or required by municipal or public regulation, except as provided above in (b).

Instruments furnished as indicated in (a) and (b) above are to be rated as earning your standard rates for like equipment and service. Instruments furnished as indicated in (c) are to be rated as earning seventy-five cents per month per instrument for local service except in cases where an amount in excess of said sum is received in cash.

There shall not be included in such total gross earnings free service, rebates or discounts allowed:

(*d*) As a matter of courtesy, except as provided above in (c).

(*e*) To charitable, religious or educational institutions.

(*f*) "Officers and employees of the company but not allowed as full or part compensation for services.

(*g*) On toll charges, either by deductions from bills or by discount on coupons regularly issued when given under rules of the company.

(*h*) On account of defective service.

(*i*) On uncollectible accounts.

The Southwestern Telegraph and Telephone Company.

Extract from the Minutes of a Meeting of the Executive Committee of this Company Held on December 17, 1902.

"Referring to a letter dated November 21, 1902, from The American Bell Telephone Company, a copy here present, offering to substitute for the amount payable by this Company under its license contracts by way of
1750 rental upon telephone instruments, four and one-half per cent (4½%) of the total gross earnings of this Company, as defined by said letter and the memorandum appended thereto, and thereupon it was

Voted: That such offer be accepted and that the President be authorized in the name and behalf of this Company to notify The American Bell Telephone Company of the acceptance thereof."

Copy.

American Telephone and Telegraph Company.

December 29, 1902.

The Southwestern Telegraph and Telephone Company,
Dallas, Texas:

Referring to the letter of this company dated November 21, 1902, offering until further notice to substitute for the rental upon telephone instruments (magneto telephones and battery transmitters) payable by your company under its license contracts and circulars in modification thereof, four and one-half (4½%) per cent of the total gross earnings of your company computed as therein provided, and to the clause in said letter "This offer when accepted will not become binding until this company shall declare the plan effective and upon such declaration shall take effect as of January 1, 1902."

You are advised that said plan is hereby declared effective as of and from January one, nineteen hundred and two.

Our Treasurer will send to you at early date a request for the necessary information to enable him to determine the amount to be credited to your company for the year 1902 under the above offer.

Yours respectfully,

(Sd.) C. JAY FRENCH,
General Manager.

Consent by Licensees given to American Bell Telephone Company to have Western Electric Company sell Telephones and Transmitters to Independent Telephone Companies. (Rec., Vol. II, 930.)

Copy.

Whereas it has been found desirable that The
1754 American Bell Telephone Company should have the power to authorize the Western Electric Company to sell telephones and Transmitters in the open market to all buyers, and

Whereas the exclusive right to use telephones for certain purposes granted to this Company by said The American Bell Telephone Company in its license contracts may be construed to prevent such sale.

Resolved: that the President be authorized to notify The American Bell Telephone Company that this Company agrees that said license contracts shall be so construed as not to prevent The American Bell Telephone Company from authorizing such sale.

Copy.

The American Bell Telephone Company.

Boston, October 3, 1907.

The Southwestern Telegraph and Telephone Company,
Dallas, Texas.

GENTLEMEN:

Referring to the vote of your Executive Committee passed September 17, 1907, touching the sale of telephones and transmitters in the open market to all buyers, I am authorized to accept for The American Bell Telephone Company the construction of a license contract expressed

in said vote and to inform you that this Company will act in accordance therewith.

Yours very truly,

(Sd.) THEO. N. VAIL,
President.

Copy.

American Telephone and Telegraph Company.

October 9th, 1920.

The Southwestern Telegraph and Telephone Company,
Dallas, Texas.

GENTLEMEN:

Your system of lines and exchanges has heretofore
1755 been operated solely with instruments furnished by this Company. Even in the case of a sublicense, sublicensee has been required to use such instruments upon all lines connecting with your system. As the Western Electric Company is about to sell telephone instruments and appliances, it seems to us that this is an appropriate time to revise and extend somewhat rules which have heretofore been followed with regard to the telephone instruments to be used upon connecting lines. We suggest, therefore, that hereafter in making sublicenses and contracts for the interchange of business you do not limit yourself solely to those who use telephones furnished by us or sold by the Western Electric Company but that, in appropriate cases, you make such contracts with companies and individuals even when they use other telephones, provided first class instruments are used and the lines are maintained and operated at such a standard of efficiency as not to impair the quality of service furnished over the joint lines.

This connection with such companies and individuals should be limited to farmers' lines, so-called, or lines of a similar character, to lines operated by railroad, and to all exchanges located wholly within your territory and not

connected with lines and exchanges in the territory of any other of our licensees.

It is important in making such contracts that great care be taken, in order that no system may be built up that will impair the value to the public of your own system or interfere with the system established by your neighbors.

Yours very truly,

(Sd.) THEO. N. VAIL,
President.

Modification of the 4½% Payment, dated December 16, 1912.

(Rec., Vol. II, 932.)

Copy.

The American Bell Telephone Company.

December 16, 1912.

Mr. H. J. Pettengill, President
The Southwestern Telegraph and Telephone
Company, St. Louis, Mo.

DEAR SIR:

The American Bell Telephone Company hereby offers to substitute the following method of computing total gross earnings in place of the method described in our letter of November 21, 1902, and subsequent interpretations thereof.

The total gross earnings, for the purpose of determining the amount, of which you pay us 4½%, shall comprise the accounts described and defined in our Accounting Circular No. 8 as follows:

Account 500 Subscriber's Station Revenues.
" 501 Public Pay Station Revenues.
" 504 Private Exchange Lines.
" 510 Message Tolls.

1757 From the total of the foregoing shall be deducted—
Account 304 Uncollectible Operating Revenues.

To the difference between the aforesaid revenues and the aforesaid deductions therefrom shall be added:

(*a*) The sum of seventy-five cents per instrument per month for all instruments not in use in excess of 3% of the total number standing charged to you on the last day of such month (the 3% representing the maximum number believed to be necessary for stock). This is the present basis as to excess stock.

(*b*) For sublicensed or other operating telephone companies not directly licensed by this Company in which you own a majority of the stock and which are in effect operated as a part of your telephone system the same proportion of their gross revenues (computed as aforesaid) as the proportion of their stock which you own.

NOTE.—On application for the exclusion of such gross revenues of any such subsidiary company the question will be carefully considered and determined on the facts in each case.

The purpose of this offer is to simplify the method of computation and to bring it closely into conformity with the accounting system established by the Interstate Commerce Commission.

This method of computation will take effect January 1, 1913, for those licensees which accept it prior to January 31, 1913. The first bills on the new method of computation will be those rendered early in March 1913.

A suggested form of resolution for the purpose is enclosed herewith. If adopted by your company kindly have the Secretary send to me a certified copy of such action.

Yours truly,

(Sd.) C. C. DU BOIS,
Comptroller.

Copy.

A letter, dated December 16, 1912, from The American Bell Telephone Company was presented, offering, for the purpose of determining the amount of gross earnings of which this Company pays Four and a Half Per Cent, to substitute in place of the method now in use the method set forth in said letter and thereupon it was

Voted: that such offer be accepted and the President be authorized in the name and behalf of this Company to notify The American Bell Telephone Company of its acceptance thereof.

1758

Copy.

January 14th, 1913.

American Bell Telephone Company,
Mr. C. G. Du Bois, Comptroller,
15 Dey Street, New York, N. Y.

DEAR SIR:

At an adjourned special meeting of the Executive Committee of The Southwestern Telegraph and Telephone Company held today, it was voted to accept the offer contained in your letter dated December 16, 1912, relating to the payment by way of rental to your Company of four and one-half per cent (4½%) of the total gross earnings of this Company.

I enclose a certified copy of the vote.

Yours truly,

THE SOUTHWESTERN TELEGRAPH AND TELEPHONE COMPANY,

(Sd.) J. P. CROWLEY,

Secretary.

Copy.

The Southwestern Telegraph and Telephone Company.

Extract from the Minutes of a Meeting of the Executive Committee of this Company Held on January 14, 1913.

"A letter dated December 16, 1912, from The American Bell Telephone Company was presented, offering, for the purpose of determining the amount of gross earnings of which this Company pays Four and a Half Per Cent, to substitute in place of the method now in use the method set forth in said letter, and thereupon it was

Voted that such offer be accepted and the President be authorized in the name and behalf of this Company to notify The American Bell Telephone Company of its acceptance thereof."

Opinion of General Counsel to American Company Interpreting the Language of the 4½% Modification of 1902 (Rec., Vol. II, 934).

Copy.

Shreeve and Vacuum Tube Repeaters.
The American Bell Telephone Company,
125 Milk Street,
P. O. Drawer 2.

1759 Boston, March 28, 1916

Southwestern Telegraph & Telephone Co. (N. Y.),
St. Louis, Missouri,
Mr. H. J. Pettengill, President.

DEAR SIR:

I enclose a copy of two resolutions adopted by the Executive Committee of the American Telephone and Telegraph Company on March 15, 1916, relative to furnishing to the associated companies Shreeve and vacuum

tube repeaters. A copy of our General Counsel's opinion upon this matter is also enclosed, as perhaps of interest.

If your company's construction of the License contract as amended, agrees with that set forth in these resolutions, will you please ask your Board of Directors or Executive Committee to pass a resolution assenting to this construction?

At your convenience please advise me of your company's action.

Yours truly,

(Sd.) R. W. DEVONSHIRE,
General Manager.

Resolved: that the officers of this Company be and they are hereby directed to advise each of the associated companies that the license contracts, as amended, existing between this Company and each of its associated companies do not, as construed by this Company, require this Company to furnish to the associated companies what are known as Shreeve and vacuum tube repeaters without a specific charge therefore in addition to the Four and One half per cent, (4½%) payments under said contracts.

Resolved further: that the officers of this Company be permitted to furnish said repeaters without specific charge therefor in addition to said four and one-half per cent (4½%) payment, to such of the associated companies as accept this construction of the said license contracts, upon the definite agreement by said companies that this Company shall at any time have the right to discon-
1760 tinue said practice and to make reasonable charges, in addition to said four and one-half per cent (4½%) payment, for all such repeaters thereafter furnished.

Copy.

New York, February 17, 1916 (M. R.).

Memorandum for U. N. Bethell, Esq., Senior Vice-President.

The Shreeve and Vacuum tube repeaters are devices for extending the radius for communication by telephone. When used in connection with telephonic communication, each of these decices accomplishes this purpose by reproducing in the relatively strong electric current passing through a second circuit the electrical undulations which characterize a much diminished current passing through the preceding circuit, the preceding circuit being connected with the second circuit through the repeater. The variations to be effected in the current in the second circuit are in each instance identical, this being accomplished in the case of the Shreeve repeater through mechanical means and in the case of the vacuum tube repeater through electrical means. So far as the question under consideration is concerned, it is unnecessary to make any distinction between the two classes of repeaters.

The question which is presented to me is whether these repeaters are telephones which the terms of the license contracts require this company to furnish to its associated companies as a part of the consideration for which the four and one-half per cent (4½%) payment is made. In my opinion, this question should be answered in the negative.

I think it clear that each of these repeaters *in* a telephone in the sense that if the Bell patents had not expired, it could not legally be manufactured and sold except by license under them. This, however, is not the question.

The license payment did not pay for everything which the licensor was bound to furnish under the contracts. It paid the rental for the telephones which were leased but

did not pay for "the inventions and call bells, switches, switchboards and other apparatus needed for such telephones lines which it (the licensor) can so license."

1761 Giving due weight to all of the provisions of these original contracts, it is my conclusion that by the telephones to be furnished under them were meant the instruments which were to be furnished to the subscribers for their use and for which the licensees were to charge subscribers such rentals and royalty as might be fixed from time to time by the licensor.

If there was any doubt under the original contracts, I think it is removed by the modification of these contracts by which four and one-half per cent (4½%) of the gross earnings was fixed as the measure of the payments under them. This modification was made by letter, sent to each of the licensee companies under date of November 21, 1902, and accepted by each of these companies. This letter contains the following language:

"The American Bell Telephone Company hereby offers, until further notice to substitute for the rental upon telephone instruments (magneto telephones and battery transmitters) payable by you under its license contracts held by you and circulars in modification thereof, four and one-half per cent (4½%) of the total gross earnings of your company."

What has been underscored definitely describes the telephone instruments which the associated companies are entitled to have furnished in consideration of this payment. They are magneto telephones and battery transmitters. This language had at the date of said letter, and has now, a well defined meaning which does not include repeaters. Moreover, no repeater available for commercial use had been developed at the time these letters were written.

The number of repeaters now in use is very small, and no charge is being made for them. I think it desirable that this practice be continued so long as there is no extension in their use, but it should be with the definite understanding that the Company is not under obligation to continue it, and that it is without prejudice to the right of the Company to require payment for the repeaters at any time that it may wish to do so.

Your very truly,

(Sd.) N. T. GUERNSEY,
General Counsel.

Copy.

Southwestern Bell Telephone System.

April 25, 1916.

1762 The American Bell Telephone Company,
Mr. R. W. Devonshire, General Manager,
125 Milk Street, Boston, Mass.

DEAR SIR:

I enclose herewith copy of a resolution passed by the Executive Committee of The Southwestern Telegraph and Telephone Company (New York) at a meeting held on April 25, 1916, relative to Shreeve and vacuum tube repeaters.

Yours truly,

THE SOUTHWESTERN TELEGRAPH AND
TELEPHONE COMPANY (N. Y.)
(Sd.) J. P. CROWLEY,
Secretary.

Letter Dated December 5, 1917, Increasing the Originating Commission in Long Distance Business (Rec., Vol. II, 937).

Copy.

American Telephone and Telegraph Company,
Telephone and Telegraph Building,
195 Broadway.

New York, December 5, 1917.

Mr. H. J. Pettengill, President,
Southwestern Bell Telephone System,
St. Louis, Mo.

DEAR MR. PETTENGILL:

The Executive Committee of this Company, in view of the extraordinary conditions due to the state of war now existing, today adopted a resolution authorizing the computation of the originating commissions payable under existing contracts by this Company to your companies, upon the following basis, beginning January 1, 1918:

(*a*) Where the "L" operator of the associated company as defined by this Company's operating rules is in charge of the communication, 25% of the cash receipts from each single connection upon which the associated company is entitled to a commission, not exceeding 30c for any single connection.

(*b*) Where the "L" operator of this Company as defined by this Company's operating rules is in charge of the communication, 25% of the cash receipts from each single connection upon which the associated company is entitled to a commission, not exceeding 12¢ for any single connection.

(*c*) On business originating at pay stations upon which the associated company is entitled to a commission if in class (*a*) twice the commission above provided for class

(*a*) business and if in class (*b*) twice the commission above provided for class (*b*) business.

This is upon the condition that this Company reserves the right at any time to discontinue the payment of said commissions upon the terms stated in this letter, and to resume their payment upon the terms of said contract.

Please advise me at your convenience whether or
1763 not this temporary modification of these contracts is acceptable to you and your Executive Committee or Board of Directors.

Very truly yours,

(Sd.) U. N. BETHELL,
Vice-President.

Copy.

Southwestern Bell Telephone System.

St. Louis, December 19, 1917.

Mr. U. N. Bethell, Senior Vice President,
American Telephone and Telegraph Company,
195 Broadway, New York.

DEAR MR. BETHELL:

On behalf of The Southwestern Telegraph and Telephone Company, I accept the offer increasing the rates of originating commissions, as outlined in your letter of December 5th.

Extract from the minutes of the Board of Directors' Meeting, giving me authority to accept the offer is enclosed herewith.

Yours very truly,

THE SOUTHWESTERN TELEGRAPH AND
TELEPHONE COMPANY,

(Sd.) H. J. PETTENGILL,
President.

SECTIONS OF PUBLIC UTILITIES ACT IN FORCE IN 1918-19.

(Hurd's Revised Statutes of Illinois, 1917.)

27. § 27. INCORPORATE [INTERCORPORATE] RELATIONS.] Unless the consent and approval of the commission is first obtained:

(a) No two or more public utilities may enter into contracts with each other that will enable such public utilities to operate their lines or plant in connection with each other;

(b) No public utility may purchase, lease, or in any other manner acquire, control, direct or indirect, over the franchises, licenses, permits, plant, equipment, business, or other property of any other public utility;

(c) No public utility may assign, transfer, lease, mortgage, sell, or otherwise dispose of or encumber the whole or any part of its franchises, licenses, permits, plant, equipment, business, or other property; but this shall not be construed to prevent the sale, lease, assignment or transfer by any public utility of any tangible personal property which is not necessary or useful in the performance of its duties to the public,

(d) No public utility may by any means, direct or indirect, merge or consolidate its franchises, licenses, permits, plant, equipment, business, or other property with that of any other public utility;

(e) No public utility may purchase, acquire, take or receive any stock, stock certificates, bonds, notes or other evidences of indebtedness of any other public utility. But with the consent and approval of the commission, a public utility may purchase, acquire, take, or hold stock, stock certificates, bonds, notes or other evidences of indebtedness of another public utility.

The proceedings for obtaining the authorization of the commission provided for in this section shall be as follows: There shall be filed with the commission a petition, joint or otherwise, as the case may be, signed and verified by the president and secretary of the respective companies, or by the person or company, as the case may be, clearly setting forth the object and purposes desired, and setting forth the full and complete terms of the proposed assignment, transfer, lease, mortgage, purchase, sale, merger, consolidation, contract or other transaction, as the case may be. Upon the filing of such petition, the commission shall, if it deems necessary, fix a time and place for the hearing thereon. After such hearing, or in case no hearing is required, if the commission is satisfied that such petition should reasonably be granted, and that the public will be convenienced thereby, the commission shall make such order in the premises as it may deem proper and as the circumstances may require, attaching such conditions as it may deem proper, and thereupon it shall be lawful to do the things provided for in such order. The commission shall impose such conditions as will protect the interests of the minority and preferred stockholders.

Every assignment, transfer, lease, mortgage, sale, or other disposition or encumbrance of the whole or any part of the franchises, licenses, permits, plant, equipment, business or other property of any public utility, or any merger or consolidation thereof, and every contract, purchase of stock, or other transaction referred to in this section, made otherwise than in accordance with an order of the commission authorizing the same, except as provided in this section, shall be void. [Constitutional. See *Public Utilities Com.* v. *Romberg*, 275 Ill. 432.

28. FOREIGN CORPORATIONS—FRANCHISES—APPLICATION OF LAW TO.] § 28. No franchise, license, permit or right to own, operate, manage or control any public utility, except

common carriers engaged in interstate commerce and except telegraph or telephone companies engaged in interstate commerce, shall be hereafter granted or transferred to any grantee or transferee other than a corporation duly incorporated under the laws of this State.

No public utility shall be in any manner exempt from the provisions of this act because or by virtue of the fact that it may be or may have been incorporated or organized under the laws of another state, or the United States, or of a foreign country. [As amended by act approved June 26, 1917. In force July 1, 1917. L. 1917, p. 643.

29. § 29. TRANSFER OF FRANCHISES.] No franchise, license, permit or right to own, operate, manage or control any public utility shall be assigned, transferred or leased nor shall any contract or agreement with reference to or affecting any such franchise, license, permit or right be valid or of any force or effect whatsoever unless such assignment, lease, contract or agreement shall have been approved by the commission. Such permission shall not be construed to revive or validate any lapsed or invalid franchise, license, permit or right, or to enlarge or add to the powers and privileges contained in the grant of any franchise, license, permit or right, or to waive any forfeiture.

30. § 30. VALUATION.] The commission shall have power to ascertain the value of the property of every public utility in this State and every fact which in its judgment may or does have any bearing on such value. In making such valuation the commission may avail itself of any information, books, documents, or records in the possession of any officer, department or board of the State or any subdivision thereof. The commission shall have power to make revaluation from time to time and also to ascertain the value of all new construction, extensions and additions to the property of every public utility.

Article IV.

RATES AND SERVICE—ACCIDENTS.

32. § 32. General duties of public utilities.] All rates or other charges made, demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or for any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful.

Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employes, and the public, and as shall be in all respects adequate, efficient, just and reasonable.

All rules and regulations made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable.

33. § 33. Filing schedule of rates.] Every public utility shall file with the commission and shall print and keep open to public inspection schedules showing all rates and other charges, and classifications, which are in force at the time for any product or commodity furnished or to be furnished by it, or for any service performed by it, or for any service in connection therewith, or performed by any public utility controlled or operated by it. Every public utility shall file with and as a part of such schedule and shall state separately all rules, regulations, terminal, icing, storage or other charges, privileges and contracts that in any manner affect the rates charged or to be charged for any service. Such schedule shall be filed for all services performed wholly or partly within this State, and the rates and other charges and classifications shall not, without the consent

of the commission, exceed those in effect on July 1, 1913. But nothing in this section shall prevent the commission from approving or fixing rates or other charges or classifications from time to time, in excess of or less than those shown by said schedules.

Where a schedule of joint rates or other charges, or classifications is or may be in force between two or more public utilities such schedules shall in like manner be printed and filed with the commission, and so much thereof as the commission shall deem necessary for the use of the public shall be filed in every station or office of such public utility in accordance with the terms of section 34 of this act. Unless otherwise ordered by the commission a schedule showing such joint rates or other charges, or classification need not be filed with the commission by more than one of the parties to it: *Provided,* that there is also filed with the commission a concurrence in such schedule by each of the other parties thereto.

Every public utility shall file with the commission copies of all contracts, agreements or arrangements with other public utilities, in relation to any service, product or commodity affected by the provisions of this act, to which it may be a party, and copies of all other contracts, agreements or arrangements with any other person or corporation affecting in the judgment of the commission the cost to such public utility of any service, product or commodity.

34. § 34. PUBLICATION AND POSTING OF SCHEDULES.] Subject to such rules and regulations as the commission may prescribe, the schedules referred to in section 33 shall be plainly printed, mimeographed or typewritten in large type, and a copy thereof shall be posted or kept on file in every station or office of a public utility where the public transacts business with such public utility. Any or all of such schedules kept as aforesaid shall be immediately produced by such public utility for inspection upon the demand of any

person. A notice printed in bold type, in size prescribed by the commission, stating that such schedules are on file with the agent and open to inspection by any person, and that the agent will assist any person to determine from such schedules any rates or other charges, classification, rules or regulations in force, shall be kept posted by the public utility in two public and conspicuous places in every such station or office. The form of every such schedule shall be prescribed by the commission and shall conform in the case of common carriers subject to the act of Congress entitled, "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and the Acts amendatory thereof and supplementary thereto, as nearly as may be, to the form of schedules and manner of posting prescribed by the Interstate Commerce Commission under said act: *Provided*, that in lieu of filing its entire schedule in each station or office, any public utility may, subject to the regulations of the Commission, file or keep posted at such station or office, schedules of such rates or other charges, classifications, rules and regulations relating thereto, as are applicable at, to and from the place where such office is located.

The commission may determine and prescribe the form in which the schedules required by this act to be filed with the commission and to be kept open to public inspection shall be prepared and arranged, and may change the form from time to time if it shall be found expedient: *Provided, however*, that the commission shall endeavor to have such form or forms prescribed by it conform so far as practicable to any similar form or forms prescribed by the Interstate Commerce Commission.

35. § 35. NO SERVICE TO BE RENDERED UNTIL SCHEDULES FILED.] No public utility shall undertake to perform any service or to furnish any product or commodity unless or until the rates and other charges and classifications, rules

and regulations relating thereto, applicable to such service, product or commodity, have been filed and published in accordance with the provisions of this act: *Provided,* that in cases of emergency, a service, product or commodity not specifically covered by the schedules filed, may be performed or furnished at a reasonable rate, which rate shall forthwith be filed and shall be subject to review in accordance with the provisions of this act.

36. § 36. CHANGES OF RATES.] Unless the commission otherwise orders, no change shall be made by any public utility in any rate or other charge or classification, or in any rule, regulation, practice or contract relating to or affecting any rate or other charge, classification or service, or in any privilege or facility, except after thirty days' notice to the commission and to the public as herein provided. Such notice shall be given by filing with the commission and keeping open for public inspection new schedules or supplements stating plainly the change or changes to be made in the schedule or schedules then in force, and the time when the change or changes will go into effect. The commission, for good cause shown, may allow changes without requiring the thirty days' notice herein provided for, by an order specifying the changes so to be made and the time when they shall take effect, and the manner in which they shall be filed and published. When any change is proposed in any rate or other charge, or classification, or in any rule, regulation, practice, or contract relating to or affecting any rate or other charge, classification or service, or in any privilege or facility, such proposed changes shall be plainly indicated on the new schedule filed with the commission, by some character to be designated by the commission, immediately preceding or following the item.

No public utility shall increase any rate or other charge, or so alter any classification, contract, practice, rule or regulation as to result in any increase in any rate or other

charge, under any circumstances whatsoever, except upon a showing before the commission and a finding by the commission that such increase is justified.

Whenever there shall be filed with the commission any schedule stating an individual or joint rate or other charge, classification, contract, practice, rule or regulation, the commission shall have power, and it is hereby given authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleadings by the interested public utility or utilities, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate or other charge, classification, contract, practice, rule or regulation, and pending the hearing and the decision thereon, such rate or other charge, classification, contract, practice, rule or regulation shall not go into effect: *Provided,* that the period of suspension of such rate or other charge, classification, contract, practice, rule or regulation shall not extend more than one hundred and twenty days beyond the time when such rate or other charge, classification, contract, practice, rule or regulation would otherwise go into effect unless the commission, in its discretion, extends the period of suspension for a further period not exceeding six months. On such hearing the commission shall establish the rates or other charges, classifications, contracts, practices, rules or regulations proposed, in whole or in part, or others in lieu thereof, which it shall find to be just and reasonable. All such rates or other charges, classifications, contracts, practices, rules or regulations not so suspended shall, on the expiration of thirty days from the time of filing the same with the commisson, or of such lesser time as the commission may grant, go into effect and be the established and effective rates or other charges, classifications, contracts, practices, rules and regulations, subject to the power of the commission, after a hearing had on its own motion or upon complaint, as herein provided, to alter to modify the same.

Within thirty days after such changes have been authorized by the commission, copies of the new or revised schedules shall be posted or filed in accordance with the terms of section 34 of this act, in such a manner that all changes shall be plainly indicated. [See *State Public Utilities Com.* v. *C. & West Towns Ry. Co.*, 275 Ill. 555.

37. §37. CHARGING MORE OR LESS THAN PUBLISHED RATE.] Except as in this article otherwise provided, no public utility shall charge, demand, collect or receive a greater or less or different compensation for any product, or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates or other charges applicable to such product or commodity or service as specified in its schedules on file and in effect at the time, except as provided in section 35, nor shall any such public utility refund or remit, directly or indirectly, in any manner or by any device, any portion of the rates or other charges so specified, nor extend to any corporation or person any form of contract or agreement or any rule or regulation or any facility or privilege except such as are regularly and uniformly extended to all corporations and persons.

38. §38. DISCRIMINATION FORBIDDEN.] No public utility shall, as to rates or other charges, services, facilities or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates or other charges, services, facilities, or in any other respect, either as between localities or as between classes of service.

Every public utility shall, upon reasonable notice, furnish to all persons who may apply therefor and be reasonably entitled thereto, suitable facilities and service, without discrimination and without delay.

39. DISCRIMINATION—REBATES, ETC.—TRANSPORTATION IN EXCHANGE FOR ADVERTISING IN NEWSPAPER.] § 39. No public utility, or any officer or agent thereof, or any person acting for or employed by it, shall directly or indirectly, by any device or means whatsoever, suffer or permit any corporation or person to obtain any service, commodity, or product at less than the rate or other charge then established and in force as shown by the schedules filed and in effect at the time. No person or corporation shall, directly or indirectly, by any device or means, whatsoever, whether with or without the consent or connivance of a public utility or any of its officers, or employes, seek to obtain or obtain any service, commodity, or product at less than the rate or other charge then established and in force therefor: *Provided, however,* that nothing in this act contained shall be construed to prevent any railroad or transportation company from selling or granting transportation or transportation privileges to the owner or owners of any newspaper or magazine of general circulation in payment of or in exchange for advertising space in such newspaper or magazine, at the full value thereof. *And, provided, further,* that nothing in this act contained shall be construed to prevent the issuance of free or reduced transportation by any street railroad corporation to mail carriers, policemen and members of fire departments. [As amended by act approved June 29, 1915. In force July 1, 1915. L. 1915, p. 758.

EXTRACT FROM

PROPOSED REPORT (pp. 20-23)

OF

INTERSTATE COMMERCE COMMISSION

No. 14700

DEPRECIATION CHARGES OF TELEPHONE COMPANIES

No. 15100

DEPRECIATION CHARGES OF STEAM RAILROAD COMPANIES

Aug. 15, 1929.

"*Depreciation and valuation.*—In our prior report we pointed out the direct and intimate connection between the accrued depreciation in a property which must be considered in its valuation and the annual charges for accruing depreciation which should be included in operating expense. This connection has been recognized from the beginning by the railroad companies and furnishes the key to their contentions. In our valuation work they have consistently taken the position that no depreciation exists in a railroad property which is maintained in 100 per cent efficiency. Obviously such a position is inconsistent with the doctrine that depreciation is a currently accruing expense which must be accounted for by annual operating charges. The railroad companies have avoided this inconsistency, except so far as they wish to adhere to the present depreciation accounting in the case of equipment and to avoid a transfer of their large equipment depreciation reserves to surplus account, and except so far as some of them favor the extension of depreciation accounting to certain classes of fixed property.

The telephone companies, however, repudiate the logic of their own position with respect to depreciation expense and deny, apparently, that it has any bearing upon depreciation in valuation. At page 301 of our prior report we stated their position as follows:

> 'The position of the telephone companies, briefly stated, is that the ultimate expense of furnishing service includes the cost of everything used up in the process, whatever it may be. It includes the cost of things that are used up slowly, such as automobiles, switchboards, buildings, pole lines, and other items of plant, just as inevitably as it includes the cost of things that are used up rapidly, such as labor, gasoline, coal, lead pencils, paper, and the like. As we understand the view of these companies, depreciation expense represents the cost incurred during an accounting period in the process of using up in service items of physical property whose lives extend over more than one such period, regardless of how they are used up. This cost is a part of, and should be shown in, operating expense; it should be shown when it is incurred, and it is incurred throughout the life of the property in service. It should, therefore, be charged to operating expense in periodical installments throughout this service life. Replacements, these companies say, do not measure depreciation expense, for it is determined by the amount and cost of the property used up. It exists whether or not the property is replaced, and is incurred regardless of whether depreciation charges are accrued. Such charges should be made in order that the accounts may properly record the facts. *As the result of making them a reserve will be created which will, if the charges have been accurately estimated, at any time equal the loss in existing property due to the process of consumption in service.* This reserve protects the integrity of the investment.'

Without questioning the accuracy of the remainder of this passage, the Bell System companies deny that the italicized sentence expresses their position. They also contend that our declaration on page 356 of the prior report that "it is essential to bear in mind, however, that there is an inseparable connection between the straight-line method

and the principle that accrued depreciation represented by the reserve must be deducted in ascertaining the rate base value," and similar statements appearing elsewhere in that report, are contrary to fact and law. It appears, moreover, from evidence of record, that in rate cases before State commissions the telephone companies are contending that their depreciation reserves should be disregarded in the process of valuation, and that for the latter purpose depreciation should be limited to the observed deterioration in the property. It was shown, for example, that one telephone company having a depreciation reserve equal to about 30 per cent of the recorded investment in the property is contending for an accrued depreciation for valuation purposes of no more than 9 per cent; and this illustration is typical.

That this position is unsound the telephone companies have themselves demonstrated. The brief which they originally filed in No. 14,700 furnishes the proof. They made it plain therein that depreciation expense is cost incurred in the consumption of property in service. The following passages leave no doubt as to their views on this point:

> 'The amount of the expense item (for depreciation) is determined by what is put into the plant and used up. These factors determine it absolutely.
>
> The cost of property used up, less the net salvage, is taken care of by monthly charges to operating expenses. To offset these charges, monthly credits in like amounts are made to this account called "Reserve for Accrued Depreciation." The money represented by these entries comes from earnings; it does not, however, go into a separate fund. It belongs to the company and goes into the general funds, and through them finds its way into property and plant owned by the company, so that as items of plant are used up they are replaced by other investments in like amounts. In this way the capital is maintained unimpaired.
>
> It is the using up of the property that constitutes the expense, the money measure of which for the entire period of the service life is the number of dollars of cost of the property, less the net salvage dollars. It is

> essentially the same in this respect as if the company had on hand on January 1 twelve hundred tons of coal that it had bought and paid for at ten dollars a ton, and would use up during the year one hundred tons a month. The expense for coal will be one thousand dollars each month, and should be so reflected in the expense account of each month. The fact that the entire twelve thousand dollars was paid for the coal in advance of its use will not alter the accounting, if it is to be strictly correct. It is to be noted that in this respect the accounting for depreciation is no different. The company buys and pays for its property in advance and then uses it up and its accounts should reflect the expense currently as it is used up.'

These quotations leave no doubt that under this view of the matter, which we have found to be sound, the depreciation charge is based on the cost of property which has been *consumed* or *used up* in service during the year; that the depreciation reserve represents the accumulated total cost of property which has been *used up* in this way but has not yet been written out of the investment account, and that the money corresponding to this reserve has gone into the general funds of the company and thence into property which has taken the place of the items which have been *used up*, thus maintaining the capital unimpaired. It is equally clear that a carrier is not entitled to a return upon property which has been *used up* and no longer exists and for which it has been reimbursed by charges to operating expense. And certainly *used up and paid for* property must be eliminated in any valuation, whether it be on the original cost, cost of reproduction, or any other basis. What does not exist can not be valued. Depreciation is depreciation, and it can not be made one thing for operating expense purposes and quite another thing for valuation purposes.*

Depreciation in valuation is pertinent here because it has

*This should be qualified in one respect. Depreciation charges are based on service lives which assume proper standards of ordinary maintenance, i. e., repairs. If repairs are neglected, deterioration may set in which is not accounted for through the depreciation charges but which may be disclosed by an inspection of the property and must be considered in the final valuation.

an important bearing upon whether annual depreciation charges should be determined by the straight-line or the sinking-fund method. This matter was discussed at pages 354-356 of our prior report. We there said, at page 355:

> 'The straight-line method is based upon the theory that the property or capital of the company is continually being consumed in service and that the owners should be reimbursed therefor concurrently with the consumption. Under this theory the funds reserved from earnings by the depreciation charges are immediately made available to the company for use for all corporate purposes. The owners cease to have a right to a return upon the portion of the property which has been consumed, but this loss is made up to them through the concurrent reimbursement. The funds so obtained by the company through this process of reimbursement may be used, if it desires, for the purchase of new property upon which a right to a fair return at once accrues. But this new property merely fills the hole caused by the partial consumption which is represented by the depreciation reserve. The sinking-fund method, on the other hand, is based upon the theory that the company is entitled to a fair return upon all property maintained in condition for proper service, regardless of the fact that a part of its service life has been consumed, and that the owners should receive no reimbursement for property consumption until the unit has finally been retired. Funds reserved from earnings by the depreciation charges are, therefore, segregated and allowed to accumulate at interest pending such ultimate reimbursement. They can not be used indiscriminately for corporate purposes but must be used to produce definite and reasonably assured earnings.'

If the view were sound that depreciation corresponding to the reserve should not be deducted in valuation, it would be necessary in fairness to the patrons of the carriers to adopt the sinking-fund method for ascertaining the annual depreciation charges. This method produces, as was pointed out in our prior report, much lower charges. The straight-line method is capable of defense only upon the theory that it contemplates immediate reimbursement to the owners for property which has been *used up* in service and on which they have ceased to have a right to a return."

(Chicago Company.) (R. V, 1860.)

Statement of Dividends Paid, Years 1882 to 1919, Inclusive.

Year	Annual Rate (Percent)
1882	32.
1883	40.
1884	48.
1885	46.
1886	47.
1887	51.
1888	39.
1889	30.5
1890	30.
1891	24.
1892	20.
1893 to 1901	12.
1902 to October, 1908	10.
1908 to 1919	8.
Average	17.72

Dividend Rate	Amount	Percent of total dividends paid
8%	$26,020,000	57.87
10%	10,035,531	22.32
12%	5,144,780	11.44
20%	485,460	1.08
24%	430,794	.96
30%	375,990	.84
30½%	332,389	.74
32%	148,000	.33
39%	376,065	.84
40%	200,000	.44
46%	318,780	.71
47%	358,281	.79
48%	310,800	.69
51%	427,686	.95
Total dividends paid	$44,964,556	100.00

AMERICAN COMPANY STOCK HOLDINGS IN ASSOCIATED COMPANIES EXCLUDING CHICAGO COMPANY.

(Taken from Annual Reports for Each Year.*)

Year	Stock Average During Year	Average Loans During Year R. VI, 2291	% Loans of Stock Holdings
1918	$ 476,135,804	104,803,236	22.0
1919	474,931,354	126,344,365	26.6
1920	468,245,209	174,873,438	37.4
1921	522,736,576	188,086,020	36.0
1922	581,921,778	139,748,963	24.0
1923	646,451,646	124,415,453	19.2
1924	758,494,056	179,832,612	23.7
1925	888,052,405	229,177,308	25.8
Total	$4,816,968,828	$1,267,281,395	26.3

*The average stockholdings are calculated by dividing by 2 the amount of stock held at the end of two successive years. The figures are taken from R. VII, 2577 (58); 2598 (64); 2615 (47); 2627 (43); 2639 (43); 2656 (42), 2668 (41); 2674 (18).

AMERICAN COMPANY STOCK HOLDINGS IN CHICAGO COMPANY.

Year	Stock Average During Year	Average Loans During Year R. VI, 2291	% Loans of Stock Holdings
1918	$ 37,337,340		
1919	39,345,600	800,000	2.4
1920	39,373,800	1,522,231	5.9
1921	44,300,500	3,200,000	7.2
1922	54,157,000	741,462	1.4
1923	63,045,000	200,000	0.3
1924	67,987,500		
1925	73,921,500	2,317,042	3.1
Total	$419,468,240	$8,780,735	2.1

AMERICAN COMPANY STOCK HOLDINGS IN ASSOCIATED COMPANIES.

Year	Stock Average During Year	Average Loans During Year R. VI, 2291	% Loans of Stock Holdings
1918	$ 513,473,145	104,803,236	20.4
1919	514,276,955	127,144,365	24.8
1920	507,619,009	176,395,669	34.8
1921	567,037,076	191,286,020	33.8
1922	636,078,778	140,490,425	22.1
1923	709,496,645	124,615,453	17.6
1924	826,481,557	179,832,612	21.8
1925	961,973,905	231,494,350	24.0
Total	$5,236,437,070	$1,276,062,130	24.4